

Stereo. H C J D A 38.
JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.19794/2023

Muhammad Hanif through LRs **Versus** Additional District Judge etc.

J U D G M E N T

Date of Hearing:	14.11.2023
Petitioners by:	Rana Saud Jalal, Advocate.
Respondent No.3 by:	Ch. Sohail Nasir Mufti, Advocate alongwith respondent.

Anwaar Hussain, J. This case has chequered history. The present constitutional petition has emanated from the third round of litigation between the parties. The contest started when predecessor-in-interest of the petitioners, namely, Muhammad Hanif (deceased) filed an eviction petition under the Punjab Rented Premises Act, 2009 (“**the Act**”) against respondent No.3, namely, Nasir Mehmood (“**the respondent**”) seeking eviction of the latter, from Shop No.5, situated in Jamia Gali No.2, Chiniot Bazar, Faisalabad (“**the rented premises**”), with the averments that the respondent is in occupation of the rented premises and has committed default since June, 2018, by not paying monthly rent of Rs.30,000/- . It was further averred that the tenancy was created between the respondent and deceased brother of the petitioner, namely, Muhammad Dilawar and after the death of said Muhammad Dilawar, predecessor of the petitioners, used to receive the rent in respect of which the respondent has committed wilful default, and despite repeated requests, the respondent failed to execute formal written tenancy with predecessor of the petitioners.

2. In the first round of litigation, the leave to appear and contest filed by the respondent, under the Act, was declined, *vide* order dated

16.05.2019, however, in appeal preferred by the respondent, the matter was remanded to the Rent Tribunal for decision afresh. In his leave to appear and contest, the respondent asserted that the tenancy is perpetual as he was put into possession of the rented premises by one Muhammad Ashraf s/o Sheikh Muhammad Hussain, who was the ex-tenant, in the rented premises, with the consent of brother of predecessor of the petitioners, namely, Muhammad Babar Bilal and an amount of Rs.2,625,000/- was paid to said ex-tenant as *pagri* in terms of an agreement dated 09.06.2008 (“**the pagri agreement**”) which was also endorsed by the said Muhammad Babar Bilal, where-after a tenancy agreement dated 27.08.2008 (“**the tenancy agreement**”) was executed between Muhammad Babar Bilal and the respondent and the latter continued to pay rent to the former before he died and after his death, rent was received by Muhammad Dilawar referred above and upon the demise of Muhammad Dilawar, rent was paid to predecessor of the petitioners namely, Muhammad Hanif, at the rate of Rs. 18,000/- and not Rs. 30,000/-. It was also pleaded that the respondent is not a defaulter and it is Muhammad Hanif who refused to receive the monthly rent in June, 2018.

3. Issues were framed and after recording of the evidence, the eviction petition was accepted, *vide* order dated 25.05.2021. However, when the appeal was preferred by the respondent, the matter was again remanded *vide* order dated 28.03.2022, by the Appellate Court below, to the Rent Tribunal to decide the same afresh with the observations that issue No.3 pertaining to status of tenancy relationship between the parties was not correctly decided as also no finding was given on issue No.5 pertaining to blackmailing of the ejectment petitioner to the respondent to vacate the rented premises.

4. Upon remand, in the third round of litigation, *vide* order dated 04.06.2022, the Rent Tribunal again accepted the ejectment petition;

declared the respondent as defaulter; and directed the respondent to vacate the rented premises within a period of one month while holding him entitled to recovery/adjustment of *pagri* amount of Rs.2,625,000/- whereas the petitioners were held entitled to recover arrears of rent at the rate of Rs.18,000/- per month from the respondent, and not at the rate of Rs.30,000/- per month as prayed for, since June 2018 onwards till delivery of possession of the rented premises to them. Feeling dissatisfied, both sides preferred appeals and through consolidated judgment dated 03.03.2023, the Appellate Court below allowed the appeal preferred by the respondent and dismissed the appeal of the petitioners with the observation that the respondent is not a wilful defaulter. The respondent has been also held entitled to recover the amount of *pagri*. Finding to the extent of eviction was maintained.

5. Learned counsel for the petitioners submits that the impugned judgment passed by the Appellate Court below is self-contradictory inasmuch as on the one hand, the findings to the extent of default have been reversed and on the other hand, the petitioners have been directed to refund the *pagri* amount. Adds that the petitioners are not obligated to return the amount of *pagri*, as no such amount was received by them or their predecessor (landlord) and the respondent failed to prove the execution of the *pagri* agreement as well as the tenancy agreement. Further contends that in the earlier round of litigation, no receipts of payment of rent were produced and few of the receipts purportedly issued by Muhammad Babar Bilal for the months of September, October and November, 2008, brought on record in the second round, contain dates which pertain to post-death period of Muhammad Babar Bilal that alone negates the stance of the respondent regarding his induction as tenant by the deceased Muhammad Babar Bilal and not by the deceased Muhammad Dilawar. Therefore, the respondent was defaulter and findings of the Appellate Court below in respect of default are erroneous.

6. Conversely, learned counsel for the respondent submits that the respondent has acted in good faith and has not denied the tenancy relationship with the petitioners. Adds that the rented premises was jointly owned by three brothers (Muhammad Babar Bilal, Muhammad Dilawar and Muhammad Hanif), and the respondent was initially inducted therein with consent of one of them (Muhammad Babar Bilal) as evident from the *pagri* agreement read with the tenancy agreement. Further contends that no forgery has been committed by the respondent as the receipts dated 05.09.2008, 05.10.2008 and 05.11.2008 were issued by Muhammad Babar Bilal, before his death, as acknowledgement of advance rent, for initial three months of the tenancy, where-after admittedly, Muhammad Dilawar also received the rent for a period of more than 10 years and after demise of Muhammad Dilawar, predecessor of the petitioners started receiving the same without any objection, hence, the same is an acknowledgement of creation of tenancy on payment of the *pagri* in respect of the rented premises. Further avers that son of ex-tenant appeared as witness who admitted that for vacating the rented premises, and handing over its possession to the respondent, an amount of Rs.300,000/- in cash alongwith other payment(s) were received by his father from the respondent. Adds that the said witness also admitted that a house was transferred by the respondent in favour of his father (ex-tenant), pursuant to the *pagri* agreement. Contends that the *pagri* agreement was also endorsed by deceased Muhammad Babar Bilal who received his commission, and the respondent also produced the second marginal witness of the said agreement to further substantiate his contention in respect of payment of *pagri*. Adds that the question of default has been correctly appreciated by the Appellate Court below as the petitioners failed to substantiate that the rent due was Rs.30,000/- per month as on June, 2008, and the respondent wilfully defaulted and since the respondent was willing to handover the possession of the rented

premises to the petitioners upon receipt of the *pagri*, therefore, the impugned findings are result of correct application of law and appreciation of facts by the Appellate Court below.

7. Arguments heard. Record perused.

8. Admittedly, the tenancy relationship between the parties is not disputed and the respondent is willing to handover possession thereof to the petitioners. In view of the above referred factual background of the case and in the light of arguments of learned counsel for the parties, this Court is only required to adjudicate the following issues:

- (i) Whether the respondent was able to establish receipt of the *pagri* amount, by predecessor of the petitioners, under the *pagri* agreement? and
- (ii) What was the rate of monthly rent in June, 2018 and whether the respondent committed any default?

9. Before addressing the nub of the matter that relates to the return of the *pagri*, this Court would first examine the issue of default. Both the Courts below have thrashed the evidence. The Rent Tribunal, through impugned order dated 04.06.2022, held as under:

“10. As far as the amount of rent Rs.30,000/- per month is concerned, the same has been alleged by the petitioners. Hence, they were required to establish said amount of rent. However, in this respect, petitioners have failed to produce cogent and convincing evidence. The evidence adduced by the petitioners comprises of oral evidence of witnesses AW-1 to AW-3. This court is, however, of the considered opinion that their statements are contradictory to the contents of ejectment petition in hand. Hence not reliable. **In the instant ejectment petition, petitioners have alleged that an amount of Rs.30,000/- was paid by respondent to the predecessor in interest of petitioners for the month of May 2018 and accordingly predecessor in interest of petitioners issued him a receipt**

which was in possession of respondent. However, when AWs appeared before the court, they made contradictory statements in their cross examination. Although, in their examination in chief, AWs have made the same statement to the effect that the receipt of rent was issued by predecessor in interest of petitioners. However, in their cross examination, AW-1 alleged that on 07/08 of May 2018 respondent came to their house for payment of rent. When he came to their house, he also brought with him a receipt providing for the payment of rent amounting to Rs.30,000/-. The same was signed by his father and handed over to respondent. Thereby, he himself has negated his version in the ejectment petition to the extent of issuance of receipt by his predecessor in interest.

11. AW-2 and AW-3 also made contradictory statements in this regard. AW-2 submitted that they were sitting on the first floor of demised premises and respondent came to pay the rent to predecessor in interest of petitioners who was also sitting with them and in their presence, the rent was paid. However, AW-1 and AW-3 submitted that the amount of rent was paid by respondent to predecessor in interest of petitioners while standing on the stairs. Thereby, the version of petitioner regarding the payment of rent amounting to Rs.30,000/- is highly unbelievable. There is no documentary evidence in this regard and the oral evidence adduced by the petitioners is highly doubtful."

(Emphasis supplied)

The finding of the Rent Tribunal as to the rate of monthly rent in June, 2018 has been upheld by the Appellate Court below. It has further been held by the Appellate Court below that ignoring receipts for payment of rent in June, 2018 @ Rs.18,000/- per month is erroneous. Said findings of the Appellate Court below are reproduced hereunder:

"12. ...Even the receipts for the month of January, February & March, which are undisputed one, shows the payment of rent amount at the rate of Rs.18,000/- per

month. It is settled principle of law, that documentary evidence prevails over the oral statement, which principle is squarely applicable to the facts of the case in hands.

13. The same signature of Muhammad Hanif, predecessor in interest are available on receipts Exh. R3/117 dated 29.04.2018, Exh R3/118 dated 21.05.2018, which have been believed and relied upon by the learned Rent Tribunal, however, same signature of Muhammad Hanif on Ex. R3/119 dated 30.06.2018, Exh R3/120 dated 21.07.2018, Exh R3/121 dated 20.09.2018 have been disbelieved by the learned Rent Tribunal, this contradictory approach by the learned Rent Tribunal is not approved by the law. Hence, the findings of default in payment of the rent by the Appellant is based on misreading of evidence, therefore, the same are interfered with.”

(Emphasis supplied)

The above quoted findings of the Appellate Court below are well reasoned and do not merit any interference.

10. Adverting to the nub of the matter that relates to the return of the *pagri* amount, issue No.4 was formulated by the Rent Tribunal in following manner:

“iv. Whether the rented shop has been obtained after payment of Rs.26,25,000/- if yes, what is its effect? OPR”

Before rendering the opinion whether the respondent was able to prove that he paid any *pagri* in accordance with law and has been rightly held entitled to its return by the Rent Tribunal as also by the Appellate Court below, it will be appropriate to examine the concept of the *pagri* under the law.

11. Under the erstwhile Punjab Urban Rent Restriction Ordinance, 1959, payment/receipt of *pagri* was not permissible, however, initially, the Punjab Rented Premises Ordinance, 2007 (“**the Ordinance**”) and there-after, the Act gave recognition to the payment/receipt of the *pagri*.

The Ordinance was endorsed by the provincial legislature, without any change, and the Act was promulgated. Section 2(e) of the Act defines the term *pagri*, in the following manner:

“(e) “*pagri*” includes any amount received by a landlord at the time of grant or renewal of a tenancy except advance rent or security”

(Emphasis supplied)

Whereas the term landlord has been defined as under:

“(d) “landlord” means the owner of a premises and includes a person for the time being entitled or authorized to receive rent in respect of the premises”

Another significant provision of the Act in relation to interpretation and adjudication of the term *pagri* is the tenancy agreement and its contents. Section 6 of the Act contemplates that a tenancy agreement, under the Act, must reflect amount of *pagri*, if any. Section 6 reads as under:

“6. Contents of tenancy agreement.– (1) A tenancy agreement shall contain, as far as possible, the following:

- (a) ...;
- (b) ...;
- (c) ...;
- (d) ...;
- (e) ...;
- (f) ...; and
- (g) amount of advance rent, security or *pagri*, if any.”

12. In the present case, the Rent Tribunal relied upon the tenancy agreement brought on record by the respondent with assertion that same was executed between Muhammad Babar Bilal and the respondent, and observed that the same was based on the *pagri* agreement, between the

respondent and the ex-tenant that was endorsed by Muhammad Babar Bilal. Operative part of the order of the Rent Tribunal is reproduced below:

“19. For what has been discussed above, this issue is decided in favour of respondent in such a manner that:-
he entered in the demised premises as a tenant on the basis of tenancy agreement No.6142, dated 27.08.2008 which was executed on the basis of an agreement No.21040, dated 09.06.2008. Accordingly, he paid an amount of Rs.26,25,000/- to previous tenant of demised premises as the amount of Pagri. Said amount was paid to predecessor in interest of petitioners namely Muhammad Babar Bilal. Petitioners have admittedly stepped into his shoes. As such, they are liable to all the obligations which incurred on their predecessor in interest. Hence, respondent is entitled to recover the same from the petitioner. This issue accordingly stands decided in favour of respondent.”

(Emphasis supplied)

It is the case of the respondent that he paid an amount of Rs.2,625,000/- as *pagri* to the ex-tenant and not the landlord under the *pagri* agreement (Exh-R/10) and the purported landlord (Muhammad Babar Bilal) only took commission as per the stance of the respondent. This fact alone raises a doubt as to the amount to be refunded by the petitioners, as the landlord. Even otherwise, the conjunctive reading of the above quoted various provisions of the Act depicts that the *pagri* amount, if any, paid by a tenant is to be recorded in the tenancy agreement and includes payment to the landlord. In the instant case, the amount paid or property transferred was made in terms of the *pagri* agreement and is not recorded in the tenancy agreement and hence, cannot be treated as *pagri* under Section 2(e), read with Section 6 of the Act. At this juncture, it will be advantageous to reproduce the *pagri agreement* that reads as under:

”اُقرار نامہ پنج محمد ریسید“

شناختی کارڈ نمبر 5-7775-33100

منکہ محمد اشرف ولد شیخ محمد حسین سکنہ مکان نمبر 32-P گلی نمبر 3 راجہ کالوں فیصل آباد کا ہوں جو کہ من مظہر ایک عدد دوکان نمبر 1 جامعہ گلی نمبر 2 انشاء اللہ مارکیٹ فیصل آباد پر بطور کرایہ قابض ہے جو کہ من مظہر نے دوکان پکڑی پر لی ہوئی ہے اور آگے کسی دیگر شخص مسکی شیخ ناصر محمود ولد بشیر احمد سکنہ گلبرگ سکیم نمبر 2 مکان نمبر 52 فیصل آباد کو بالعوض مبلغ 26,25,000/- نصف جن کے مبلغ تیرہ لاکھ بارہ ہزار پانچ صدر و پے (-/-13,12,500) ہوتے ہیں میں فروخت کر کے زربیعانہ مبلغ 3,00,000/- (3) محرومہ امر و زہ رو برو گواہان حاشیہ نقد ازاں مشتری برائے رسید و صول پالیا ہے اور بتایا قم تفصیل ذیل میں ایک عدد مکان تعمیر شدہ برقبہ (2M-3-1/2s) ایتی مبلغ 14,50,000/- روپے واقع شیخ کالوں بلاک D فیصل آباد جس میں میٹر بجلی - لال پپپ - پانی والی بینکی وغیرہ چالو حالت وغیرہ کا قبضہ مورخہ 01-08-2008 کو مظہر مشتری کو دینے کا پابند ہو گا اور بتایا قم مبلغ 8,75,000/- (8) مورخہ 01-08-2008 کو مشتری ممن مظہر کو دا کرنے کا پابند ہو گا اور مزید یہ کہ مکان مذکورہ برقبہ (2M-3-1/2s) کی رجسٹری مورخہ 01-08-2008 کو مشتری حق من مظہر کروانے کا پابند ہو گا اور من مظہر ٹرانسفر بحق مشتری دوکان مذکورہ کرنے کا پابند ہو گا۔ اور مکان مذکورہ تمام نصب شدہ بجلی، پانی، سوئی گیس، لال پپپ چالو حالت میں مشتری دینے کا پابند ہو گا۔ اور تمام واجبات سرکاری وغیر سرکاری کلیئر دینے کا پابند ہو گا۔ مکان مذکورہ ہر قسم کے تنازعات سے پاک ہو۔ مکان مذکورہ کسی بینک میں رہن شدہ نہ ہے اور مکان مذکورہ من مظہر ہر قسم کلیئر دینے کا پابند ہو گا۔ میں مظہر کیم اگست 2008 کو دوکان مذکورہ مشتری کے نام ٹرانسفر کرو اکر دینے کے پابند ہوں گے۔ من مظہر ووارثان ممن مظہر اقرار نامہ ہذا کے پابند ہوں گے۔ لہذا اقرار نامہ بتائی ہوش و حواس خمسہ بخوبی خود تحریر و تکمیل کر دیا ہے کہ سندر ہے اور بوقت ضرورت کام آؤے۔

مورخہ 09-06-2008، مقام فیصل آباد،

Moreover, perusal of record reveals that the *pagri* agreement has been witnessed by one Sheikh Muhammad Asif son of Sheikh Muhammad Lateef and Shahzad Mohy-ud-Din son of Muhammad Ashraf Sheikh. The said witnesses of the *pagri* agreement appeared as RWs before the Rent Tribunal and purported signatures of Muhammad Babar Bilal are also available on the side/margins of the *pagri* agreement, *albeit* without a thumb impression. The *fora* below have only relied upon the purported signatures of deceased Muhammad Babar Bilal on both the agreements (the *pagri* and the tenancy agreements) to conclude that the agreements were genuine ignoring the fact that while the tenancy agreement is signed by all the parties as also the witnesses thereof and the thumb impressions thereon have also been put by each one of them; the *pagri*

agreement, which is prior in time, is only signed by the witnesses and deceased Muhammad Babar Bilal and no thumb impression of any one of them is available, except the ex-tenant. Moreover, on the backside of the *pagri* agreement, receipt of amount of Rs.50,000/- on 06.08.2008 as also Rs.100,000/- is acknowledged by the purported ex-tenant, however, said payment(s) have not been witnessed by the above referred RWs or by the deceased Muhammad Babar Bilal or Muhammad Dilawar but name of one Abdul Sattar is reflected as witness, who never appeared before the Rent Tribunal. Moreover, at the back of the *pagri* agreement, there is also mentioning of the fact that some property had been transferred by the respondent to the ex-tenant of the rented premises to establish that the same alongwith the cash payment(s) constituted the entire amount of the *pagri* paid by the respondent. Since there is no witness in respect of the factum of payment(s) recorded at the back of the *pagri* agreement, therefore, the same has no evidentiary value. Moreover, nothing has been brought on record to show that any immovable property was transferred by the respondent to the purported ex-tenant of the rented premises pursuant to the *pagri* agreement and/or the tenancy agreement. Furthermore, it has been also asserted by the respondent that deceased Muhammad Dilawar was also present at the time of execution of the *pagri* agreement, however, there is no justification available on record for not asking the deceased Muhammad Dilawar to witness the *pagri* agreement when statedly the rented premises was jointly owned by three brothers and only the son and close relative, namely, Sheikh Muhammad Asif, of the ex-tenant, attested the said agreement. These facts cast serious doubt in respect of veracity of both the agreements. Moreover, the fact that Muhammad Babar Bilal died on 05.09.2008 and receipts of rent dated 05.09.2008, 05.10.2008 and 05.11.2008 purportedly signed by Muhammad Babar Bilal in itself defeats the stance of the respondent that the tenancy was created by

Muhammad Babar Bilal, more particularly, when the statement of the respondent as RW-1 is perused that reads as under:

”یہ غلط ہے کہ بابر بلاں 05.09.2008 کو فوت ہو گیا تھا۔ مجھے اس کی فوت ہونے کی تاریخ یاد نہ ہے۔ میں اس کے جنائز میں شامل ہوا تھا۔ مجھے صبح دس بجے اس کی وفات کا علم ہوا تھا۔ بابر بلاں کو آخری دفعہ اکتوبر 2008 میں ادا یتگی کی تھی۔“

(Emphasis supplied)

Death Certificate of Muhammad Babar Bilal available on record depicts date of death as 05.09.2008. therefore, the above quoted statement of RW-1 (the respondent) contradicts the stance taken by learned counsel for the respondent during the arguments that deceased Muhammad Babar Bilal signed all three above referred receipts at the time of execution of the tenancy agreement as acknowledgement of advance rent and hence, the case of the respondent falls under clutches of legal maxim '***Allegans Contraria Non Est Audiendus***' (A person who alleges things contradictory to each other is not to be heard).

13. On the top of it is the fact that there is an apparent lack of connectivity between the *pagri* agreement and the tenancy agreement (that is later in time) to substantiate that the respondent paid the *pagri* amount with the consent of the landlord and, pursuant thereto, the tenancy agreement, which the respondent himself has relied upon, was executed inasmuch as there is nothing in the tenancy agreement to indicate the said fact. The tenancy agreement reads as under:

”مایا نکہ ناصر محمود ولد شیخ بشیر احمد ساکن مکان نمبر B-52 گلبرگ سکیم، گل نمبر 8 محمد پورہ فیصل آباد
(فریق اول/کرایہ دار)

و مسی محمد بابر بلاں والد بشیر احمد ساکن گل نمبر 2، (جامعہ) چنیوٹ بازار فیصل آباد (فریق دوئم/مالک)
کے ہیں۔

جو کہ ایک دوکان نمبر 1 واقع انشاء اللہ کلا تھا مارکیٹ، جامعہ گل نمبر 2، چنیوٹ بازار فیصل آباد، بمحض میٹر
بکھل چالو حالت، ملکیت و مقبوضہ فریق دوئم بلا شراکت غیرے و میرا الزہر قسم کے بار و تنازعات کے ہے۔
سواب فریق اول نے دوکان مذکورہ مبلغ چار ہزار روپے (4,000) ماہوار کرایہ پر ازاں فریق دوئم

حاصل کر کے قبضہ لے لیا ہے۔ یہ کہ کرایہ داری از مرخہ 01-07-2008 سے شروع کی گئی ہے۔ یہ کہ فریق اول ماہوار کرایہ ہر ماہ کی پانچ تاریخ تک باقاعدگی سے فریق دو ممکنہ کو ادا کرنے کا پابند ہو گا۔ یہ کہ فریق اول دو کان مذکورہ کو سب لٹ نہ کرے گا۔ اور نہ ہی دو کان مذکورہ کسی دیگر شخص کو دے کر علیحدگی اختیار کرے گا۔ یہ کہ فریق اول دو کان مذکورہ میں کوئی توڑ پھوڑ یا اضافی تعمیر نہ کرے گا۔ یہ کہ بل بھلی و کار و باری ٹیکسز وغیرہ علاوہ کرایہ بذمہ فریق اول ہوں گے۔ یہ کہ اگر عدم ادائیگی کوئی بھی نکشن کٹ جائے تو فریق اول اپنے خرچہ پر دوبارہ مجال کروانے کا پابند ہو گا۔ یہ کہ فریق اول دو کان مذکور میں کوئی بھی غیر قانونی وغیر اخلاقی کام نہیں کرے گا۔ یہ کہ اگر فریق اول نے مسلسل تین ماہ تک کرایہ ادا نہ کیا تو مستوجب بید خلی ہو گا۔ یہ کہ اگر فریق اول نے کسی بھی شرط مذکور کی خلاف ورزی کرے گا تو مستوجب بید خلی ہو گا۔ اور یہ کہ اگر دو کان مذکورہ خالی کروانے کے لیے فریق دو ممکنہ کو کوئی قانونی چارہ جوئی کرنی پڑی، تو اس کا تمام تر ہرج و خرچ بذمہ فریق اول ہو گا۔ وہ تحریر ہذا کے پابند ہوں گے۔ لہذا یہ کرایہ نامہ بخوبی خود، بقاگی ہوش و حواس، بلا جرا کراہ غیرے رو برو گواہان حاشیہ تحریر کرادیا ہے کہ سندر ہے۔

مورخہ 27-08-2008

Moreover, the respondent while appearing RW-1 also stated as under:

”وہ لا محدود کرایہ نامہ ہے۔ اس میں پگڑی کا ذکر نہ کیا تھا۔ بابر بلال کے پاس 03 ماہ تک کرایہ دار رہا تھا۔ بابر بلال کے فوت ہونے کے اور اس کے اصل مالکان کا معلوم نہ کیا تھا۔ بابر بلال کے بعد لا اور کو کرایہ دینا تھا وہ سائل کا بھائی حاضر نہیں ہے اس کا تحریری ملکیتی ثبوت جائزیاد متند عویہ نہ دیکھا تھا۔“

(Emphasis supplied)

Absence of any reference in the tenancy agreement about the *pagri* agreement earlier executed in favour of the respondent or the receipt of *pagri* amount, read with above quoted statement of the respondent indicates that both the agreements are not so intertwined and interrelated to form part of one and the same transaction and to be read conjunctively. This fact alone is sufficient to create an adverse inference in relation to the genuineness of the *pagri* agreement as also the tenancy agreement particularly when no reason was put forth by the respondent for the said disconnect during the recording of evidence by the Rent Tribunal or by his learned counsel during the course of arguments before this Court. Consequently, this Court is propelled to conclude that the respondent failed to establish that he was inducted as a tenant on the

basis of the tenancy agreement executed on the strength of the *pagri* agreement.

14. In view of the above discussion, findings of the Courts below, to the extent of return of *pagri* are erroneous, as also result of misreading and non-reading of evidence, and hence are not sustainable and the respondent is not entitled to receive any amount on account of *pagri*. To this extent, the judgment of the learned Appellate Court below is modified and the respondent is obligated to forthwith vacate the rented premises along with payment of monthly rent due till date.

15. **Disposed of** in the above terms.

(ANWAAR HUSSAIN)
Judge

Approved for reporting.

Judge

Akram