

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Syed Mansoor Ali Shah

Mr. Justice Aqeel Ahmed Abbasi

**CIVIL APPEAL NO.470 OF 2022**

*(Against the impugned judgment dated  
16.12.2020 of the Peshawar High Court,  
Peshawar in RFA No.281-P/2019)*

*Iftikhar ud Din (decd.) through L.Rs.*

***... Appellants***

*Versus*

*M/s Askari Bank Limited and others*

***... Respondents***

For the Appellants: Mr. Irfan Javed ASC

For the Respondents: Mr. Iftikhar Ahmad Bashir ASC  
Mr. Khaliq uz Zaman ASC

Date of hearing: 16.04.2025

**JUDGMENT**

**AQEEL AHMED ABBASI, J.-** The instant appeal has been filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 against the impugned judgment dated 16.12.2020 passed by the Peshawar High Court in RFA No. 281-P/2019 wherein the High Court has set aside the judgment and decree of the Additional Rent Controller, Peshawar dated 17.10.2019 in which the respondents were directed to hand over vacant possession of the rented premises to the appellants.

2. Brief facts of the case as recorded by the learned Single Judge of the Peshawar High Court are that the late Iftikhar ud Din Khattak (now represented through his L.Rs.) ("**Appellants**") sought ejectment of M/s Askari Bank Limited and others ("**Respondents**") by filing a petition under Section 17 of the Cantonment Rent Restriction Act, 1963 (the "**Act**") from Shops No. 42, 43 along with upper portion of the shops situated in Satta Gadai, 32- the Mall, Peshawar Cantonment ("**Tenements**"). The appellant (Iftikhar ud din Khattak) averred that he became the owner and rent collector of the property by virtue of Mutation No.09-578/348/11/60 dated 21.12.1999 which devolved upon him after the demise of his mother, Begum Ihsan ud Din Khattak and is entitled to receive rent at the

rate of Rs.10,000/- per month in respect of the above mentioned rented-out property. Subsequent to the demise of his predecessor and the mutation in his favour the appellant served the respondent No.2 a notice intimating the change of ownership dated 22.01.2004 and then another on 07.10.2004 requesting that payment of monthly rent be made to him and a fresh rent agreement be executed. It was further averred by the appellant that the upper portion of the building was subletted to the respondents i.e. Askari Bank Limited and Mr. Faiz Muhammad by respondent No. 2. The appellant filed the ejectment petition on two grounds, firstly, that the respondent No. 2 was a wilful defaulter since 21.12.1999 and an amount of Rs. 1,220,000 /- was outstanding against him as default and secondly, the rented premises were subletted as mentioned above. The respondent No.2 refused to execute a fresh rent agreement when asked by the appellant to do so subsequent to the mutation in his favour. The ejectment petition was contested by the respondents, however, it was dismissed for non-prosecution on 09.05.2005 for which an application for restoration was submitted and the same was accepted on 23.11.2005. The petition for ejectment was allowed *ex-parte* on 09.05.2017 due to the absence of the respondents against which they filed an application for setting aside *ex-parte* decree which was accepted by the Additional Rent Controller on 25.07.2017 but once again it was allowed *ex-parte* and respondents were directed to hand over vacant possession of rented premises vide order dated 14.12.2017. This order dated 14.12.2017 was assailed through FAO No.61-P/2018 before the Peshawar High Court which was allowed on 07.09.2018 and the case was remanded back to the Trial Court for its decision afresh. After remand, M/s Askari Leasing Limited was impleaded as a party and after completion of evidence and hearing both the parties, the Additional Rent Controller allowed the petition for ejectment on 17.10.2019.

3. The order of the Additional Rent Controller was assailed by the respondents by filing the First Rent Appeal before the Peshawar High Court, Peshawar, in which the learned Single Judge of the Peshawar High Court after hearing both the parties reversed the judgment and decree of the Additional Rent Controller vide impugned judgement dated 16.12.2020 and thereby the ejectment petition of the appellant stood dismissed. Feeling aggrieved, the appellants challenged the same before this Court by filing a Civil

Petition for Leave to Appeal in which leave was granted vide order dated 09.05.2022 which, for ease of reference, is reproduced herein under: -

" Learned counsel for the petitioners contends, *inter alia*, that the Rent Controller has granted a decree for ejectment of the respondents but the Appellate Court fell into an error of law by misreading the evidence regarding relationship of landlord and tenants between the parties. Further submits that subletting of demised premises was also established on record which alone was sufficient for ejectment of respondents but the said evidence was even not considered while dismissing the rent/ejectment application of the petitioners.

2. Points raised need consideration. Leave to appeal is granted to consider the same. The appeal stage paperbooks be prepared on the basis of available record with liberty to the parties to file additional documents, if so advised. Since a short point is involved, the appeal be fixed within three months."

4. It has been contended by the learned counsel for the appellants that the Peshawar High Court has erred in law and facts by allowing the RFA of the respondents and thereby dismissing the ejectment petition of the appellants erroneously and without appreciating the fact that the respondents failed to comply with the Tentative Rent Order dated 05.07.2006 passed by the Additional Rent Controller. It has been further contended that the High Court has failed to appreciate that there was wilful default on the part of the respondents as the respondents had neither paid rent to the appellants nor deposited the same before the Rent Controller in accordance with law and that there is misreading and non-reading of evidence as well as mis-appreciation and non-appreciation of facts on the record. Learned counsel further contends that the respondents have only shown evidence of depositing the rent from the year 2013 in the form of receipts but have defaulted since 21.12.1999. He contends that not only no evidence of tendering of rent is submitted before the Court but the respondents have also failed to submit any documents of the alleged loan/pagri amount and the alleged adjustment of rent. He further contends that even their own witness-Sagheer Ahmed (R.W.1) has said in his statement that he has not brought evidence/ record of loan with the predecessor's son.

5. Conversely, learned counsel for the respondents has vehemently opposed that there is wilful default on the part of the respondents. Per learned counsel, the letter for adjustment of lease

rentals dated 07.09.1998 with the predecessor-Begum Ihsan ud Din Khattak reflects that there was mutual understanding regarding the adjustment of rent. Learned counsel further contends that documents pertaining to the repayment schedule and the receipts showing the deposit of rent from 09.12.2006 to 01.02.2010, have been placed on record through additional documents filed alongwith instant Civil Appeal before this Court. Per learned counsel, these documents are sufficient to negate the allegation of wilful default of rent and establish that rent was being paid and adjusted in accordance with prior understanding between the parties.

6. We have heard the learned counsel for the parties, perused the record with their assistance and examined the judgments of the fora below.

7. Perusal of the record shows that the appellant Iftikhar ud Din upon whom the subject tenements were devolved through inheritance from his mother Begum Ihsan ud Din Khattak by virtue of Mutation No.09-578/348/11/60 dated 21.12.1999 filed ejectment petition under Section 17 of the Act on the ground of default of payment of rent at the rate of Rs.10,000/- per month with effect from 21.12.1999 till the filing of the ejectment petition i.e. on 04.02.2005 as well as subletting of the subject tenements by Askari Leasing Limited to Askari Bank Limited. It has further emerged that before filing the ejectment petition before the Additional Rent Controller the appellant had issued two notices dated 22.01.2004 and 07.10.2004 intimating respondent No.2 about change of ownership and also default in payment of rent by the respondents to the appellant. It was further stated that the respondent No.2 has subletted the upper portion of the subject tenements to one Faiz Muhammad (P.W.1) without permission of the appellant. Since the respondent did not submit any response nor started to pay rent to the appellant despite receipt of such notices, the appellant filed ejectment Petition No.3 of 2005 on 22.02.2005 in the Court of Rent Controller Peshawar against Manager Askari Leasing Limited, Askari Bank Limited and one Faiz Muhammad (Respondents) under Section 17 of the Act for eviction of the respondents from subject tenements on the aforementioned two grounds. In response to such, notices were issued to the respondents pursuant to which written statement was filed by Askari Leasing Limited (respondent No.2 herein) wherein both the allegations of default and subletting were denied whereas a

stance was taken to the effect that subject tenements were obtained from Begum Ihsan ud Din Khattak alias Mst. Husn Pari on payment of Rs 1,600,000/- as goodwill, therefore, ejectment cannot be sought on the ground of default. Besides aforesaid objection, it was stated that there has been no rent agreement in respect of subject tenement at the rate of Rs.10,000/- whereas as per rent agreement dated 28.09.1996 from the previous owner rent of shops was Rs.3000/- (each) per month and not Rs.10,000/-. It was adjusted towards payment of some loan, however, no detail of loan or its adjustment appears to have been mentioned nor any evidence to this effect has been produced before the Additional Rent Controller. From perusal of the written statement, filed by the respondent, it has further transpired that except denying the ground of subletting of the subject tenements along with upper portion of the shops situated in Satta Gadai, 32- the Mall, Peshawar Cantonment to one Faiz Muhammad neither any documentary evidence with regard to amalgamation of Askari Leasing Limited with Askari Bank Limited was produced nor any witness has been produced by the respondents to support such fact. It has been further observed that even the alleged original rent deed and original pagri deed dated 28.09.1996 produced were not exhibited in accordance with law before the Rent Controller. In view of divergent pleadings, the following issues were framed for the purpose of deciding the ejectment petition:-

- "1. Whether the petitioner has got any cause of action?*
- 2. Whether the respondent No.1 have sublet the suit shop to respondent No. 2?*
- 3. Whether the respondent No.1 is willfull defaulter?*
- 4. Whether the actuall rate of rent is Rs.3000/= or Rs. 10000/= P.M each shop.*
- 5. Relief. "*

The appellants in support of their claim examined Mst. Ishrat Begum, widow of late Iftikhar ud Din Khattak (P.W. 1) on oath and she produced the following documents: Legal notice dated 22.01.2004 (Ex P.W. 1/3) regarding change of ownership, Registered AD Cards/receipts (Ex P.W. 1/1 and Ex P.W. 1/ 2) and Mutation No. 09-578/348/11/60 dated 21.12.1999. She was also subjected to cross-examination by counsel of the respondents. Thereafter, on

behalf of the respondents, one Sagheer Ahmed (R.W.1), Manager, Askari Leasing Limited, produced some documents including authority letter (Ex. R.W.1/1), original pagri deed (Ex. R.W.1/2) and copy of rent agreement (Mark 'A'). He was subjected to cross-examination by the counsel of the appellants. This witness of the respondents in his statement took the stance that the subject tenements were taken on rent on payment of pagri from Begum Ihsan ud Din Khattak, however, while confronted by the learned counsel for the appellants with regard to payment of rent or its adjustment towards loan he has candidly stated that he has not brought any record relating to the alleged loan obtained by Waqar ud Din Khattak. Similarly, no evidence with regard to merger/ amalgamation of respondent No.1 with respondent No.2 was produced before the Rent Controller. He could not produce any document showing that the rent of the subject tenements during the defaulting period was paid or adjusted against any purported loan.

8. In view of above facts and circumstances of case and evidence produced, the Additional Rent Controller was pleased to hold that the respondent No.2 is a wilful defaulter since 21.12.1999 till the institution of ejectment petition dated 04.02.2005 and has failed to submit the evidence required to rebut the allegations of default. The findings of the Additional Rent Controller with respect to default in payment of rent is reproduced herein below:

" That the petitioner claim Rs 10000/- per shop in the ejectment application after issuing legal notices against the respondents and also as a default claim the amount from 21/12/1999 till the institution of ejectment petition as Rs 12,20,000/-, while according to re-joinder also claim 25 % after each Three 3 years, while the respondent No. 1 submitted a "RENT DEED" and a PAGRI DEED" consisting in shape of four copies which is available on file, which contradict each others the shape and writing after the comparison and the respondent also failed to produce the original as well as to produce the marginal witnesses and author of both the deeds available at the file consisting of 4 pages and in the reply the respondent as per reliance of the above mentioned deeds only admitted monthly rent as Rs3000/- per shop and also submitted that the rent was adjusted in the loan taking by son of the original petitioner, but the respondent failed to submit any documents of loan and also failed to submit any documents of adjustment of rent in loan. It is to be noted that the petitioner himself has not taken any loan from the respondent No. 1. (emphasis supplied)

After perusal of the statement of the petitioner the respondent failed to specifically cross examined the petitioner and the respondent No. 1 being the beneficiary of the rent deed and PAGRI DEED failed to prove both the deeds which are also contradictory with the other rent and

PAGRI DEED executed on the same date which were produced by the respondent No.1.

The demised property being in commercial in nature and situated at the MAIN THE MALL PESHAWAR CANTT, the respondent No. 1 submitted the monthly rent only Rs 6000/- with regard two shops while failed to produce any adjustment documents with regard to loan and the respondent also failed to enhance the monthly rent after each 3 years, therefore from the pleading as well as from the available evidence it is proved that the respondent No. 1 is a wilful defaulter not to pay the monthly rent at the rate of rs. 10,000/- per shop and also failed to enhance the monthly rent of 25 % after each 3 years.

And now an amount Rs. 12,20,000 /- till institution of ejectment petition as well as an amount of 7,000/- per shop from the date of institution of the ejectment petition till the announcement order, which is amounting Rs1155000/- while also bound to pay the amount of increase rent to petitioner, therefore, both the issues are decided in positive against the respondent No.1"

9. The Askari Bank Limited (respondent No.1 herein) being aggrieved by the aforesaid judgment and decree passed by the Additional Rent Controller, Peshawar dated 17.10.2019 whereby the ejectment petition filed under section 17 of the Cantonment Rent Restriction Act, 1963 by the appellant was allowed and the respondents were directed to hand over the subject tenements to the appellants, filed RFA No.281-P/2019 before the Peshawar High Court who vide impugned judgement dated 16.12.2020 was pleased to allow the appeal while setting aside the judgment and decree passed by the Additional Rent Controller Peshawar and consequently the ejectment petition of the appellants was dismissed, however, with an observation that the respondents are at liberty to move to the Rent Controller for fair rent under section 7 of Cantonment Rent Restriction Act, 1963 if the respondents may so desire. It is pertinent to note that the issue regarding subletting has been decided against the appellants by the Peshawar High Court but the appellants before us have not specifically agitated such findings relating to subletting, whereas, the learned counsel for the appellants has merely argued that proper opportunity has not been provided while passing the impugned judgment, and has only pressed the ground of default in payment of rent.

10. Since the learned counsel for the appellants has not expressly pressed the ground of subletting of the subject tenements, therefore, we are not inclined to examine such aspect of the matter in the instant case, however, would dilate upon the issue relating to default in payment of rent in respect of subject tenements. Perusal

of the pleadings, the evidence produced by the parties and the judgment and decree passed by the Additional Rent Controller, reflect that after minute scrutiny of the evidence available on record the Additional Rent Controller has recorded his findings relating to default in payment of rent, by holding that the respondents have committed wilful default in payment of rent for the aforesaid mentioned periods as no evidence to this effect could be produced by the respondents. Whereas, the Peshawar High Court while disagreeing with the Additional Rent Controller on the ground of default in payment of rent, appears to have misdirected itself while observing that there is no default in payment of rent for the reason that the amount of rent was Rs.6000/- per month and not Rs.10,000/- as claimed by the appellants. The Peshawar High Court while passing the impugned judgment failed to appreciate that the issue in hand was default in payment of rent and not the amount of rent or fixation of fair rent. Moreover, an amount of rent calculated on the basis of evidence placed on record was determined at the rate of Rs. 6000/- which was directed to be deposited in Court pursuant to the Tentative Rent Order dated 05.07.2006, however, record reveals that even such Tentative Rent Order appears to have not been complied with, as instead of depositing the arrears of rent as per Tentative Rent Order, the respondent took a plea that the arrears of rent have been adjusted towards payment of loan obtained by the predecessor of the appellants. However, admittedly, no documentary evidence was produced to support such stance of the respondents before the Additional Rent Controller or even before the Peshawar High Court. It has been further observed that the Peshawar High Court has wrongly concluded that the Tentative Rent Order dated 05.07.2006 has been complied with and respondents have not committed any default in payment of monthly rent as no proof regarding deposit of the arrears of rent in Court with effect from July 2006 till December 2012 was duly exhibited before the Rent Additional Controller whereas, the rent receipts exhibited before the Additional Rent Controller, relate to the period from January 2013 to August 2019. Even the documents regarding the amalgamation of Askari Leasing Limited and Askari Bank Limited were not produced before the Additional Rent Controller and were referred to for the first time before the Peshawar High Court.



11. In view of herein above facts and circumstances of the case, we are of the opinion that the Peshawar High Court while holding that the respondents have not defaulted in payment of rent has committed an error while misreading and non-reading the evidence available on record. Needless to observe that even in the written statement and the evidence produced by the respondents with regard to default in payment of rent, the respondents took a stance that the rent was being adjusted towards payment of loan by the predecessor of the appellants, however, no documentary evidence to this effect was produced before the Courts below, which otherwise is sufficient to establish the wilful default in payment of rent for the aforesaid period. It will not be out of place to observe that non-compliance of the Tentative Rent Order itself was sufficient ground for ejectment of the tenant without further inquiry into merits as it constitutes wilful default. Reference in this regard can be made to the cases of M.H. Mussadaq v. Muhammad Zafar Iqbal and another (2004 SCMR 1453) and Misbahullah Khan v. Mst. Memoona Taskinuddin (1995 SCMR 287). However, it appears that the Peshawar High Court without appreciating the factual position and the evidence produced by the parties in support of their respective claims, misdirected itself while setting aside the order passed by the Additional Rent Controller on the issue of default in payment of rent, nor could appreciate the effect of non-compliance of the Tentative Rent Order passed in the instant case. Accordingly, the instant civil appeal is allowed and the impugned judgment dated 16.12.2020 passed by the Peshawar High Court is set aside on the ground of default in payment of rent, and the judgment of the Additional Rent Controller dated 17.10.2019 is hereby upheld.

Judge

Judge

Islamabad  
16<sup>th</sup> April, 2025  
"Approved for Reporting"  
(Zainab Bashir, L.C.)