

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-I:
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Aqeel Ahmed Abbasi

C.P.L.A.3854/2024
(Against the judgment of the Lahore High Court, Lahore,
dated 14.05.2024, passed in Writ Petition No.17731/2024)

Zafar Iqbal & another.

... Petitioners

Versus

Syed Riaz Hussain Shah & others.

... Respondents

For the Petitioners:	Ch. Muhammad Masood Jahangir, ASC.
For Respondent No.1:	Malik Ijaz Hussain Gorcha, ASC. (Through V.L. Lahore Registry)
Respondents No. 2 & 3: (Special Judge (Rent) and Additional District Judge)	Proforma Respondents
Date of hearing:	25 February 2025

ORDER

Syed Mansoor Ali Shah, J.- The present case raises a short but important question of law: Is a disputed tenancy agreement required to be proved in a proceeding before the Rent Tribunal under the Punjab Rented Premises Act 2009, in accordance with the provisions of Articles 17(2)(a)¹ and 79² of the Qanun-e-Shahadat 1984? This question arises from the following facts of the case.

2. The Petitioners, Zafar Iqbal and Abdul Aziz, filed a petition under Section 15 of the Punjab Rented Premises Act, 2009 ("the Act"), seeking the eviction of the Respondent, Syed Riaz Hussain Shah, from a shop - the alleged rented premises. In their eviction petition, the Petitioners asserted that they had rented out the shop to the Respondent through a tenancy agreement dated 21.03.2006 ("the tenancy agreement"). They required the shop for their personal use and, in accordance with the terms of the

¹ **17. Competence and number of witnesses.** — (2) Unless otherwise provided in any law relating to the enforcement of Hudood or any other special law, —(a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men, or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly;

² **79. Proof of execution of document required by law to be attested.**— If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of given evidence:

tenancy agreement, served a one-month notice upon the Respondent to vacate the premises. However, the Respondent refused to comply with the same. On the other hand, in his application for leave to defend, the Respondent contended that he is not a tenant of the Petitioners in the shop and that the tenancy agreement is false and fraudulent. Based on the pleadings of the parties, the Rent Tribunal framed the following issues:

- (1) Whether the relationship of landlord and tenant exists between the parties? OPA
- (2) Whether the petitioner is entitled qua eviction of the respondent, if the above-mentioned issue affirms in positive? OPA
- (3) Whether the petition is not maintainable? OPR
- (4) Relief.

After recording the evidence of both parties on the above issues, the Rent Tribunal answered Issue No. 1 in the negative, primarily on the ground that the Petitioners had failed to prove the execution of the tenancy agreement due to their failure to produce both attesting witnesses. Consequently, the Rent Tribunal dismissed the Petitioners' eviction petition. However, the Additional District Judge accepted the Petitioners' appeal, holding that the provisions of the Qanun-e-Shahadat do not apply to proceedings before the Rent Tribunal and, therefore, the mere non-production of both attesting witnesses could not be fatal to the Petitioners' case. Accordingly, he reversed the findings of the Rent Tribunal on Issue No. 1 and allowed the eviction petition. The Respondent then challenged the order of the Additional District Judge before the High Court in its writ jurisdiction. The High Court accepted the challenge and, in doing so, held as follows:

Petitioner [the Respondent before this Court] categorically denied the existence of relationship of landlord and tenant between the parties and also denied the execution of rent agreement. It was the duty of respondents [the Petitioners before this Court] No. 3 & 4 to produce both marginal witnesses to prove the rent agreement but they failed to produce the same, as such rent agreement is not proved by respondents No.3 & 4. As per Article 17 read with Article 79 of the Qanun-e-Shahadat Order, 1984, it is duty of respondents No.3 & 4/ejectment petitioner[s], to prove the alleged rent agreement by producing both the witnesses but here in this case admittedly both witnesses of the alleged rent agreement were not produced in evidence and even no convincing reasons have been expounded in this regard, which is a blatant non-compliance of the above mentioned mandatory provision of law and same leads to conveniently hold that respondents No.3 & 4 have failed to prove the valid execution of the alleged rent agreement as per law. The non-production of the required number of witnesses in evidence is blatant non-compliance of the aforesaid mandatory provisions of law which impress fatal impact on the case of respondents No.3 & 4. Reliance is placed on the cases cited as Hafiz Tassaduq Hussain Vs. Muhammad Din through legal heirs and others (PLD 2011 SC 241), Farzand Ali and another Vs. Khuda Bakhsh and others (PLD 2015 SC 187) and Farid Bakhsh Vs. Jind Wadda & others (2015 SCMR 1044).

Based on the above findings, the High Court allowed the writ petition, set aside the order of the Additional District Judge and restored the decision of the Rent Tribunal. Hence, the Petitioners have filed the present petition for leave to appeal, giving rise to the question of law set out in paragraph 1 above.

3. We have heard and considered the arguments of the learned counsel for the parties and, with their able assistance, have also examined the record of the case.

4. It may be noted at the outset that a Rent Tribunal under the Act, like the Rent Controller under the West Pakistan Urban Rent Restriction Ordinance 1959, acts in a quasi-judicial capacity and does not function as a court of law in the strict sense of the term.³ Similarly, although Article 1(2) of the Qanun-e-Shahadat provides that it applies to all judicial proceedings in or before any Court, including a court-martial, tribunal, or other authority exercising judicial or quasi-judicial powers or jurisdiction, its applicability to proceedings before a Rent Tribunal under the Act is expressly excluded by Section 34 of the Act.⁴ Consequently, the provisions of the Qanun-e-Shahadat do not *stricto sensu* apply to proceedings before a Rent Tribunal under the Act, as the special law (the Act) prevails over the general law (the Qanun-e-Shahadat).⁵

5. We have deliberately used the adverbial phrase *stricto sensu* in the last sentence of the previous paragraph, for despite the non-applicability of the provisions of the Qanun-e-Shahadat to proceedings under the Act, a Rent Tribunal may, rather should, invoke the general principles of the law of evidence codified in the Qanun-e-Shahadat concerning relevancy, admissibility or weight of evidence when admitting and appraising evidence to decide disputed facts. Since a Rent Tribunal adjudicates upon civil rights and obligations in eviction proceedings, the parties thereto are entitled to a fair trial and due process under Article 10A of the Constitution of the Islamic Republic of Pakistan.

6. A fair trial and due process require that no material that does not constitute evidence should be relied upon. No fact in dispute may be

³ Khadim Mohy-Ud-Din v. Rehmat Ali Nagra PLD 1965 SC 459 (5MB).

⁴ **34. Provisions of Qanun-e-Shahadat Order and Code of Civil Procedure not to apply.** - Save as otherwise expressly provided under this Act, the provisions of the Qanun-e-Shahadat Order, 1984 (P.O. No.10 of 1984), and the Code of Civil Procedure, 1908 (Act V of 1908) shall not apply to the proceedings under this Act before a Rent Tribunal, District Judge or Additional District Judge.

⁵ Shahid Raza v. Fauzia Shaheen 2003 M L D 1215 (DB), which so holds in the context of Section 17 of the Family Courts Act 1964, is approved.

established through material that is not testified by a competent witness. Likewise, where a document is produced in evidence, the fundamental question that arises is whether it is genuine. Therefore, even though the provisions of the Qanun-e-Shahadat may not strictly apply to proceedings under the Act, it will be unfair if a Rent Tribunal could rely on inadmissible material, such as hearsay, or base its decision on copies of documents without producing and satisfactorily proving the originals when they exist.⁶ This underscores the necessity for a Rent Tribunal to invoke and apply the general principles of the law of evidence codified in the Qanun-e-Shahadat to ensure fairness and due process in determining the civil rights and obligations of the parties in eviction proceedings.⁷

7. However, applying the general principles of the law of evidence does not mean that a Rent Tribunal must enforce all the provisions of the Qanun-e-Shahadat, as doing so would render Section 34 of the Act redundant and frustrate the legislative objective⁸ behind the very enactment of the Act—namely, the expeditious disposal of rent matters.⁹ Therefore, a Rent Tribunal cannot be required to adhere strictly to all the principles of the law of evidence codified in the Qanun-e-Shahadat or to any special provisions introduced therein that amend general principles of the law of evidence. A distinction must be drawn between invoking and applying the general principles of the law of evidence codified in the Qanun-e-Shahadat and any special provisions enacted therein. Thus, while adjudicating upon civil rights and obligations in eviction proceedings, a Rent Tribunal should invoke and apply only those general principles of the law of evidence codified in the Qanun-e-Shahadat that

⁶ Bareilly Electricity Supply Co. v. The Workmen AIR 1972 SC 330.

⁷ Noori Trading Corporation v. Abdul Ghafoor (1997 CLC 205) is approved, which holds that the “[rent] proceedings being quasi-judicial in nature all the principles of C.P.C. and Evidence Act cannot be invoked, though general principles may be applied.” Similarly Javaid Iqbal v. Muzaffar Khan (1976 SCMR 229) and Abdul Majeed v. Zahir Ali Shah (PLD 1985 SC 191) are respectfully agreed with, which hold that neither the Civil Procedure Code nor the Evidence Act are in terms applicable to the eviction proceedings under the Rent Restriction Ordinance, and the proceedings before the Rent Controller are not to be frustrated by mere formalism because in deciding such cases the only requirement for him is to ensure that no party should be prejudiced by the procedure adopted by him and that each party is afforded a fair opportunity to present his case. Further, in Hanif v. Ahmed Shah (2001 SCMR 577), this Court, while discussing the application of the general principles of the Code of Civil Procedure, observed: “There is no gainsaying that the provisions of the Code of Civil Procedure may not be *stricto sensu* applicable to the proceedings before a Rent Controller; however, broad and equitable principles regulating the procedure of the proceedings before the Rent Controller can always be invoked and attracted in the interest of justice and fair play.” See also Saeed Pervaiz v. Masood Hassan 2008 SCMR 568 (many previous cases are cited and discussed in it).

⁸ See preamble of the Act, which says: “Whereas it is expedient to regulate the relationship of landlord and tenant, to provide a mechanism for settlement of their disputes in an expeditious and cost effective manner and for connected matters;”

⁹ Farzana Rasool v. Muhammad Bashir (2011 SCMR 1361) is respectfully agreed with, as it makes a similar observation regarding the Family Courts Act, particularly its Section 17, which is *pari materia* with Section 34 of the Act.

are necessary to give effect to the fundamental right of the parties under Article 10A of the Constitution; it need not apply all the principles or any special provisions enacted in the Qanun-e-Shahadat. This distinction is rooted in the summary nature of rent proceedings, which are designed to resolve disputes expeditiously and without the procedural formalities of regular civil trials. The general principles of evidence—such as the burden of proof, relevance of evidence, and the right to cross-examine—must nevertheless apply to safeguard the constitutional right to a fair trial. However, the relaxation of detailed evidentiary rules, such as strict compliance with the formal proof of documents or the exclusion of hearsay evidence, is justified by the need to maintain the efficiency and accessibility of rent proceedings. This approach strikes a balance between upholding due process and preserving the summary character of rent proceedings.

8. From an economic and social perspective, relaxed evidentiary procedure serve critical public policy objectives. They reduce litigation costs, making the process more accessible to individuals who may lack the resources to comply with stringent evidentiary requirements. This, in turn, encourages investment in rental housing by providing landlords with a reliable mechanism to address disputes swiftly. At the same time, these rules protect tenants from unjust eviction and homelessness, thereby maintaining housing stability and social harmony. By addressing the inherent power imbalances between landlords and tenants, relaxed evidentiary rules promote equity and fairness, ensuring that the legal process does not become a tool for oppression or undue advantage. In sum, the relaxation of evidentiary procedure in rent proceedings is not merely a procedural convenience but a necessary measure to uphold the principles of justice, economic efficiency, and social welfare.

9. In light of the above principles of law, when we examine Articles 17(2)(a) and 79 of the Qanun-e-Shahadat, it becomes evident that they do not embody general principles of the law of evidence but rather enact special provisions therein. A Rent Tribunal was, therefore, in no way bound to invoke and apply these provisions for the purpose of determining the genuineness of the tenancy agreement. Accordingly, we answer the question in the terms that a disputed tenancy agreement is not required to be proved in a proceeding before the Rent Tribunal under the Act, in accordance with the provisions of Articles 17(2)(a) and 79 of the Qanun-e-

Shahadat. The reliance of the High Court on three judgments of this Court is misplaced, as they pertain to civil suits, not eviction proceedings.

10. Having thus answered the question of law, we now proceed to examine whether the Petitioners have produced sufficient evidence to establish the genuineness of the tenancy agreement on the standard of preponderance of probability, which ordinarily applies to all civil cases, including rent matters.

11. To establish the genuineness of the tenancy agreement, the Petitioners tendered the original deed (Exh-P4) in evidence. One of the Petitioners, Zafar Iqbal, appeared as AW-1 and deposed regarding the due execution of the agreement. Two other witnesses, Abdul Aziz (AW-2) and Muhammad Sibtain (AW-3), corroborated the Petitioners' stance. Additionally, the Petitioners tendered the certified copy of the revenue record (Exh-A5) to prove their ownership of the shop. Conversely, the Respondent, Syed Riaz Hussain Shah (RW-1), merely made bald assertions denying both the genuineness of the tenancy agreement and the Petitioners' ownership of the shop. He did not file any application before the Rent Tribunal seeking a comparison of his purported signatures on the tenancy agreement with his admitted signatures by an expert to establish forgery, nor did he initiate any proceedings against the stamp vendor who recorded a note on the stamp paper of the tenancy agreement—bearing both his and the Respondent's signatures—stating that the Respondent had obtained the stamp paper for executing the tenancy agreement in favour of the Petitioners. Further, the Respondent's own witness, Muhammad Iqbal (RW-2), expressed in cross-examination his ignorance about the tenancy agreement between the parties. Such evidence of the parties on the crucial issue clearly tilts in favour of the Petitioners' stance and establishes the genuineness of the tenancy agreement on the standard of preponderance of probability.

12. As this Court has held in several cases,¹⁰ in the absence of any evidence to the contrary, the owner of a property, by virtue of his title, is presumed to be the landlord, and the person in possession is presumed to be the tenant of that property. In the present case, this presumption is further strengthened by a written tenancy agreement, the genuineness of which, as stated above, is proven on the standard of preponderance of

¹⁰ *Shajar Islam v. Muhammad Siddique* PLD 2007 SC 45 and *Ahmad Ali v. Nasar-Ud-Din* PLD 2009 SC 453.

probability. Therefore, we find that the Rent Tribunal and the High Court legally erred in answering Issue No. 1 in the negative, whereas the Additional District Judge was correct in deciding the same in the affirmative and holding that the relationship of landlord and tenant exists between the parties.

13. As for Issue No. 2, we find that the tenancy agreement does not specify a fixed term. In such a situation, under Section 106 of the Transfer of Property Act 1882, the tenancy is deemed to be from month to month, terminable, on the part of either landlord (lessor) or the tenant (lessee), by fifteen days notice expiring with the end of a month of tenancy. Moreover, the tenancy agreement expressly provides that if the Respondent wishes to close the business in the shop, he may terminate the tenancy with one month's notice. Similarly, if the Petitioners require the shop for their personal use, they may also terminate the tenancy by serving one month's notice.

14. The Petitioners asserted in paragraph 4 of the eviction petition that they required the shop for their personal use and, accordingly, served a one-month notice upon the Respondent to vacate the premises. However, the Respondent refused to comply. In his application for leave to defend the eviction petition, the Respondent did not specifically dispute the Petitioners' assertion regarding the notice. The Petitioner, Zafar Iqbal (AW-1), reaffirmed this fact in his affidavit (Exh-A1), and this statement remained unchallenged during his cross-examination. Furthermore, the Respondent did not contest the Petitioners' claim that they required the shop for their personal use.

15. As held by this Court in *Jehangir Rustom*,¹¹ the statement of a landlord on oath—if consistent with the averments made in the eviction petition and neither shaken in cross-examination nor disproved in rebuttal—is sufficient to establish that the landlord's requirement for personal use is bona fide. The Petitioners are, therefore, entitled to seek the Respondent's eviction from the shop not only under Section 106 of the Transfer of Property Act, 1882, but also pursuant to the express terms of the tenancy agreement, which provides for termination on the ground of personal use with one month's notice.

¹¹ *Jehangir Rustom v. State Bank of Pakistan* 1992 SCMR 1296. Later followed in *F.K. Irani and Co. v. Begum Feroze* 1996 SCMR 1178.

16. For the above reasons, we find that the Additional District Judge rightly accepted the Petitioners' eviction petition. In contrast, the Rent Tribunal legally erred in law by dismissing the petition, and the High Court similarly erred in restoring its decision through the impugned judgment. Accordingly, we convert this petition into an appeal and allow the same: the impugned judgment of the High Court is set aside, and the decision of the Additional District Judge is upheld.

Judge

Islamabad,
25 February 2025.

Judge

Approved for reporting.

Iqbal