

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

C.P. No.S-154 of 2025

Petitioner: Muhammad Khan s/o Khuda Dad Khan through  
**Mr. Roshan Ali Azeem Mallah, advocate.**

Respondents: 1. Muhammad Aijaz s/o Nawaz Khan  
2. Usman Ghani s/o Abdul Ghani through **Mr.  
Dileep J. Mullani, advocate.**

Date of hearing 12.09.2025

Date of Judgment 12.09.2025

## **J U D G M E N T**

**TASNEEM SULTANA, J:** Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution), the petitioner (opponent) has impugned the judgment dated 12.03.2025 passed by the learned IIIrd Additional District Judge, Hyderabad in First Rent Appeal No.105 of 2024, whereby the appeal of the petitioner was dismissed and the judgment dated 19.08.2024 passed by the learned VIIth Senior Civil Judge/ Rent Controller, Hyderabad in Rent Application No.68 of 2024 was maintained, through which the rent application filed by the respondent No.1 (applicant) under Section 15 of the Sindh Rented Premises Ordinance, 1979 was allowed and ejectment of the petitioner was ordered.

2. The brief facts of the case are that respondent No.1 instituted Rent Application No.68 of 2024, asserting himself to be the sole and exclusive owner of the demised premises, namely Workshop No.1056 admeasuring 90 square yards situated at Makrani Para, Unit No.7, Latifabad, Hyderabad. It was averred that by virtue of a rent agreement dated 09.07.2018, the said premises had been let out to the present petitioner at a monthly rent of Rs.37,000/- against a security deposit of Rs.200,000/-. The tenancy was subsequently renewed on 15.02.2023 at an enhanced rent of Rs.44,000/- per month, and once again renewed on 08.07.2023 with further enhancement to Rs.48,400/- per month, subject to agreed terms and conditions. Despite such arrangements, the petitioner failed to discharge his liability and defaulted in the payment of rent from August 2023 onwards, besides committing default in electricity charges which accumulated to Rs.199,559/-. Consequently, respondent No.1 sought ejectment of the petitioner through the said rent application with the following prayer;-

(a) *This Court may be pleased to order the opponent/tenant to vacate the rented premises viz. workshop bearing No1056 admeasuring 90.0 Sq.yards, situated in Makrani Para Unit No.7 Latifabad Hyderabad and hand over its vacant peaceful possession to the applicant after clearance/payment of outstanding electricity bill.*

(b) *This Court may be pleased to order the opponent to deposit the arrears of rent since August 2023 till to date at the rate of Rs.48,400/- per month in the Nazir office of this Honorable court and continuing paying the same with incremental increase of 10% per annum as envisaged in the Sindh Rented Premises Ordinance, 1979.*

(c) *Costs of the application may be saddled upon the opponent*

(d) *Any other relief which this Honorable Court deems, fit, just and proper may also be awarded in the circumstances of the cases.”*

3. After admission of the rent application, notices were issued to the petitioner. On 31.05.2024, Mr. Talat Hussain Laghari, Advocate, appeared and filed Vakalatnama on behalf of the petitioner at Ex.6, whereafter the matter was adjourned to 06.07.2024 for filing objections. However, despite being granted several opportunities, the petitioner failed to file objections. Consequently, on 07.08.2024, the petitioner was debarred from filing objections, and the matter was adjourned to 15.08.2024 for filing affidavit in ex-parte evidence.

4. The respondent No.1 was examined at Ex.8, wherein he produced his affidavit in ex-parte at Ex.8/A, rent agreement dated 09.07.2018 at Ex.8/B, rent agreement dated 15.05.2022 at Ex.8/C, rent agreement dated 08.07.2023 at Ex.8/D, electricity bill for the month of October 2023 at Ex.8/E, lease of Plot No.1056, Makrani Para Colony, Unit No.7, Latifabad, Hyderabad at Ex.8/F, and lease plan of Plot No.1056 at Ex.8/G. Thereafter, the side of the respondent No.1 was closed vide statement at Ex.9.

5. Learned trial Court after hearing counsel for respondent No.1 passed impugned judgment whereby rent application was allowed directing the petitioner to hand over the peaceful vacant possession of demised premises viz. Workshop bearing No.1056 admeasuring 90-.0 Sq.Yards Makrani Para Unit No.7 Latifabad Hyderabad to respondent No.1/landlord within 30 days of passing this order. Petitioner filed First Rent Appeal which has also been dismissed vide the impugned judgment dated 12.03.2025, hence, this petition with following prayers;

a. *Call for the Record and Proceedings of the case from the learned Rent Controller/Senior Civil Judge No. VII Hyderabad in Rent Application No.68 of 2024 and the learned Additional District*

*Judge No.III Hyderabad in First Rent Appeal No.105 of 2025, and after examining their legality, validity, propriety, and correctness;*

*b. Declare that the impugned orders dated 19.08.2024 passed by the learned Rent Controller and dated 12.03.2025 passed by the learned Appellate Court are illegal, void ab initio, coram non judice, without lawful authority, and of no legal effect, having been passed in violation of the settled principles of law and in disregard of the petitioner's fundamental rights;*

*c. Set aside the impugned orders/judgments passed by the learned Rent Controller and the learned Appellate Court in Rent Application No.68 of 2024 and First Rent Appeal No. 105 of 2025 respectively;*

*d. Suspend and restrain the execution proceedings initiated in consequence of the impugned orders, being illegal and without jurisdiction, particularly when the petitioner is not in possession of the subject rented premises;*

*e. Declare that no subsisting tenancy exists between the petitioner and Respondent No.1 at the time of institution of Rent Application No.68 of 2024, and the petitioner cannot be held liable under a tenancy that had already expired and was not in effect;*

*f. Grant an injunction restraining Respondent No.1, his agents, representatives, or any person acting on his behalf from taking any coercive or adverse action against the petitioner on the basis of the impugned orders;*

*g. Grant any other relief(s) which this Honourable Court may deem fit, just, and proper in the circumstances of the case, in the interest of justice, equity, and fair play;*

*Costs of the petition be saddled upon the respondents.”*

6. Learned counsel for the petitioner has argued that the impugned judgments dated 19.08.2024 and 12.03.2025 are against law, facts, equity, and the principles of natural justice; that the petitioner filed objections on 02.08.2024 before the learned Rent Controller, which were duly taken on record. However, in a manifestly malafide and arbitrary manner, trial Court neither passed any order on the said objections nor reflected them in the court diary. Instead, it falsely recorded that the petitioner had failed to file objections and unlawfully debarred him from contesting the proceedings. This procedural impropriety resulted in passing impugned judgment; that after declaring the petitioner ex parte, the trial court fixed the matter for ex parte evidence on 15.08.2024. On that date, Respondent No.1 filed an affidavit in support of his case, and without affording the petitioner an opportunity to cross-examine or defend, the application was allowed in undue haste on 19.08.2024. Such conduct clearly reflects malafide and violation of fair trial rights guaranteed under Article 10-A of the Constitution; that the petitioner had already vacated the premises in June 2023 and is no longer a

tenant of Respondent No.1. The ejectment order passed against a non-occupant is coram non judice and without lawful authority; that the petitioner is, in fact, a creditor of Respondent No.1 to the extent of Rs.300,000/-, recovery whereof is already sub judice before the Court of 5th Civil Judge & Judicial Magistrate, Hyderabad; that the courts below ignored the execution of a subsequent tenancy agreement between Respondent No.1 and Respondent No.2, Usman Ghani, who is in actual possession of the premises and against whom Rent Application No.192/2024 is pending. This fact alone disentitles Respondent No.1 from obtaining ejectment against the petitioner; that the impugned judgments, passed by the trial and appellate courts, are based on surmises and conjectures, suffer from material irregularities, and are therefore liable to be set aside. In support of his contentions he has relied upon 2025 SCMR 690.

7. On the other hand, learned counsel for respondents No.1 & 2 has supported the impugned judgments and submitted that both the courts below, after considering all material available on record, have rightly passed the same, which do not suffer from any illegality or irregularity; that the petitioner, despite appearing through his counsel, did not bother to contest the rent application and remained absent, which clearly shows that he had no interest to proceed with the matter; that the impugned judgments, being legal and lawful, have been correctly rendered and liable to be upheld. In support of his contentions he has relied upon 2025 SCMR 358.

8. Heard and record Perused.

9. Now, before proceeding further, it need to be reiterated that this Court normally does not operate as a Court of appeal in rent matters rather this jurisdiction is limited to disturb those findings, which, prima facie appearing to have resulted in some glaring illegalities resulting into miscarriage of justice. The finality in rent hierarchy is attached to appellate Court and when there are concurrent findings on both rent authorities the scope becomes rather tightened. It is pertinent to mention that captioned petition fall within the writ of certiorari against the judgment passed by both the Courts below in rent jurisdiction and it is settled principle of law that the same cannot be disturbed until and unless it is proved that same is result of misreading and non-reading of evidence. The Hon'ble Supreme Court of Pakistan in the case of *Farhat Jabeen v. Muhammad Safdar and others* [2011 SCMR 1073] has held as under:-

*"Heard. From the impugned judgment of the learned High Court, it is eminently clear that the evidence of the respondent side was only considered and was made the basis of setting aside the*

*concurrent finding of facts recorded by the two courts of fact; whereas the evidence of the appellant was not adverted to at all, touched upon or taken into account, this is a serious' illegality committed by the High Court because it is settled rule by now that interference in the findings of facts concurrently arrived at by the courts, should not be lightly made, merely for the reason that another conclusion shall be possibly drawn, on the reappraisal of the evidence; rather interference is restricted to the cases of misreading and non-reading of material evidence which has bearing on the fate of the case."*

Besides above, the Supreme Court of Pakistan in the case of *Muhammad sharif v. Muhammad Afzal Sohail [PLD 1981 SC 246]* while affirming dismissal of a constitution petition in a rent case arising from the conflicting findings of Rent Controller and the Additional District Judge has observed as follows:-

*"We are of the view that the petitioners were fully aware that a writ petition did not lie in these circumstances, but had filed it merely to gain time and delay their eviction from the shop. We have been noticing, of late, that notwithstanding the fact that the Legislature, in its wisdom has abolished the second appeal in cases under the West Pakistan Urban Rent Restriction Ordinance and has made the orders of the District Judge as final, yet the parties, probably after obtaining legal advice, have taken to filing writ petitions in the High Court against the final order passed by the appellate Court, merely to take another chance or to delay their eviction, hoping that the matter shall take considerable time to be disposed of or that in any case the High Court while dismissing their writ petition may be persuaded to allow further time for vacating the premises-in-question. The writ petitions are argued before the High Court as if they are regular second appeals and we notice that the learned Judge of the High Court take great pains to re-appraise the evidence and to consider each and every contention raised by the petitioner's side before deciding the petition without realizing that, more often than not, such petitions are merely a devise to circumvent the amendment in the law and defeat the obvious intention of the Legislature, namely, a speedy determination of cases under the Urban Rent Restriction Ordinance. Such frivolous applications not only cause the poor litigants to incur necessary expenditure but also result in the waste of valuable public time and should, therefore, be discouraged by the High Court. It has been repeatedly held that a tribunal having jurisdiction to decide the matter is competent to decide it rightly or wrongly and the mere fact that another conclusion could be arrived at from the evidence does not make it a case for interference in the exercise of its constitutional jurisdiction."*

10. The instant petition is against the concurrent findings recorded by both the Courts below, thus it would be conducive to refer paragraphs No.7, 8, 9 & 11 of the appellate Court, which are reproduced as under:-

7. *The appellant's primary contention is that the trial court violated the principles of natural justice by not affording him an opportunity to cross-examine the respondent and by deciding the matter in his absence. The principles of natural justice,*

*particularly audi alteram partem (hear the other side), are fundamental to the administration of justice. However, these principles are not absolute and must be balanced against the conduct of the parties. In the case of Muhammad Nawaz Sharif vs. Imran Ahmed Khan Niazi (PLD 2018 SC 1), the Supreme Court of Pakistan held that while the right to be heard is fundamental, a party who neglects to avail himself of the opportunities provided by the court cannot later claim a violation of natural justice. In the present case, the appellant was given multiple opportunities to file objections and contest the matter but failed to do so. His conduct indicates a lack of diligence as discussed supra, and he cannot now claim that his right to be heard was violated.*

8. *The contention that trial court proceeded ex parte after the appellant failed to file objections despite being given multiple opportunities. Under Section 15 of the SRPO, the court has the discretion to proceed ex parte if a party fails to appear or file pleadings within the stipulated time. Honorable Supreme Court in number of cases upheld the trial court's decision to proceed ex parte when the defendant failed to file a written statement despite being given ample opportunities. In the present case, the trial court acted within its discretion by debarring the appellant from filing objections and proceeding ex parte. The appellant's failure to contest the application cannot be attributed to the trial court.*

9. *The appellant has alleged that the trial court decided the matter in a hasty manner. However, the record shows that the trial court granted multiple adjournments to the appellant and only proceeded ex parte after he failed to file objections. The judgment was passed after recording the respondent's evidence, and there is no indication of undue haste in the trial court's proceedings.*

11. *After considering the facts, contentions, and relevant case law, this Court finds no merit in the appeal. The trial court acted within its discretion by proceeding ex parte after the appellant failed to file objections despite being given multiple opportunities. The principles of natural justice were not violated, as the appellant's conduct demonstrated a lack of diligence. The impugned judgment having been passed by trial court after considering the oral as well as documentary evidence, which went uncontroverted and same is in accordance with the law and does not warrant interference by this Court. I therefore, answer point No.1 as negative.*

As well as it would be appropriate to refer relevant point for determination of trial Court which is available at page No.41 is reproduced as under:-

“4. *I have heard the Learned Advocate for applicant and also perused the material available on record. No doubt the rent application is proceeded ex-parte, however, it is the prime duty of the court to consider all the aspects of the case and adjudge the claim of applicant properly to avoid any kind of prejudice to other side. In order to prove the version, the applicant has produced sufficient proof in shape of documentary evidence mentioned above and same are ample proof to show that opponent was tenant of the applicant. Nothing has come in rebuttal in respect of tenancy relationship between the parties despite the fact that opponent*

*appeared before this court through his counsel but later on, he didn't bother to contest the matter which shows that either he is not interested or admitting the contents mentioned in application or nothing is his defence.*

5. *As, the version of applicant has gone unchallenged or un-rebuttal, hence his rights cannot be denied in absence of strong material. In view of the above circumstances, instant rent application is allowed directing the opponent to hand over the peaceful vacant possession of demised premises viz. Workshop bearing No.1056 admeasuring 90-.0 Sq.Yards Makrani Para Unit No.7 Latifabad Hyderabad to applicant/landlord within 30 days of passing this order. So far as, prayer clauses (b) viz. Recovery of arrears is concerned, the same do not come within the domain of a Rent Controller and applicant is at liberty to approach competent forum for such claim."*

11. Here question arises whether Rent Controller without affording opportunity to the petitioner decided rent application ex-parte? To resolve this controversy this Court examined the record carefully. Prima facie reflects sheer negligence and a malafide intent to delay and frustrate the execution of a lawful order, rather than to bonafide pursue his defence. The petitioner, having allowed the eviction order to attain finality, cannot now invoke the constitutional jurisdiction of this Court to circumvent the consequences of his own negligence and indolence. It is well-settled principle of law that "the law assists the vigilant and not those who sleep over their rights". This legal principle rooted in the latin maxim "*vigilantibus non dormientibus jura subveniunt*". This means that individuals must act promptly and diligently to assert their legal rights as unreasonable delays can lead to their claims being dismissed by Courts.

12. From the above, it is evident that both the trial court and the appellate court rendered well-reasoned judgments after properly assessing the material on record. There is no any jurisdictional error nor any perversity, illegality or infirmity I found in the judgments passed by two courts below. Needless to mention that constitutional jurisdiction is a discretionary jurisdiction which is meant to foster justice and to remedy the wrong but could not be allowed to be invoked in routine course as an additional remedy to hamper the findings of fact, correctly recorded by the forums below.

13. For the foregoing reasons, the instant petition was dismissed vide short order dated 12.09.2025, and these are the detailed reasons in support thereof.

**J U D G E**