

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**C.P. No. S-965 of 2024**

*Date*

*Order with Signature(s) of Judge(s)*

**HEARING / PRIORITY.**

1. For hearing of CMA No. 7186 of 2024
2. For hearing of Main Case.

**20.05.2025**

Ms. Naheed A. Shahid, Advocate for the Petitioner.  
M/s. Chaudhry Atif Rafiq and Nadeem Ahmed, Advocates for the  
Respondent No.2.  
Mr. Falak Zeb, Advocate for the J.S. Bank.

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

1. The instant Petition has been filed impugning Order dated 06.08.2024. The impugned Order was passed on an application preferred by the learned counsel for the Petitioner, seeking for recalling the Order dated 23.05.2024.

2. Brief facts of the case are that the Respondent No.2 preferred Rent Case No.308 of 2022 for ejectment of the Petitioners under Section 15 of the Sindh Rented Premises Ordinance 1979 (**“SRPO”**). During the proceedings, the counsel for the Petitioners cross-examined witnesses produced by Respondent No.2. Thereafter, Respondent No.2 filed a Statement dated 23.05.2024, in which, he sought the permission of the Court to re-examine the witnesses, restricting himself to the cross-examination that had already been recorded by the learned Rent Controller. Based on the statement filed by the learned counsel for Respondent No.2, the permission was granted vide Order dated 23.05.2024. Subsequently, an application was preferred for recalling of the Order dated 23.05.2024. The Application was decided vide Impugned Order dated 06.08.2024.

3. Learned counsel for the Petitioners has contended that Respondent No.2 is only trying to improve his case and has not highlighted the ambiguity and/or the lacunas in the cross-examination. The learned counsel has further argued that no chance should be given to the Respondent No.2 to improve the case and the details of the questions which have been enumerated in Paragraph-D of the Counter Affidavit furnished by Respondent No.2, will only result in improving the case of the said Respondent. She has further argued that there is no ambiguity in the cross examination which would require further re-examination.

4. Conversely, learned counsel for Respondent No.2 has argued that if given the permission he will restrict the re-examination to the cross-examination already recorded by the learned Rent Controller. He has clarified that no such permission is warranted by law and the same was sought only for expediency. He has further contended that he will only address questions in the re-examination pertaining to the documents already exhibited by the said witnesses before the learned Rent Controller. He has very categorically highlighted the scope of the proposed re-examination, relying more specifically on Paragraph-D of his Counter Affidavit to the instant Petition.

5. I have heard the learned counsels for the parties and perused the record.

6. The instant adjudication essentially requires an interpretation of Article 133 of the Qanoon-e-Shahadat Order 1984 (**“Order 1984”**). The same is reproduced below: -

**133. Order of examinations:** (1) *Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) reexamined.*

*(2) The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.*

*(3) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in reexamination, the adverse party may further cross-examine that matter.*

7. It is evident from the bare reading of the above noted Article that Article 133 clearly specifies the order of examination. Whilst specifying the order, the said Article also specifies the ambit of the examination to be conducted by the respective parties. It is evident upon bare reading of subsection (1) that in the Order of Examination first Examination-In-Chief will be conducted by the party, who calls the witness. It is very evident that the same is mandatory and a condition precedent to the examination/s to follow. Thereafter, the cross-examination is to be conducted of the same witness by the “*adverse party*”. Whilst the examination in chief is mandatory, it is evident from plain reading, that the cross examination is the discretion of the “*adverse party*”. The said discretion can easily be deciphered from the following words appearing in the Article i.e. “*(if the adverse Party so desires)*”. In the same vein the noted article gives the discretion to the party who called the witness to re-examine. The said discretion can be deciphered from the following words appearing in the above-noted Article i.e. “*(if the Party calling him so desires)*”. It is also abundantly clear that the possibility of re-examination only surfaces if the witnesses can be cross-examined. To put it simply, cross-examination is the discretion of the “*adverse party*” whilst re-examination is the discretion of the party who called the witness. Both rights, it is held, are unalienable and the discretion discussed above, is solely with the respective parties.

8. The unalienable right to re-examine has further been clarified in subsection (3) of the said article. It is held that the said right does **not** require filing of an application and/or statement. The scheme of the above-noted subsection clearly denotes that as long as the scope of the re-examination is restricted to the cross examination, the discretion to re-examine, vests **solely** with the party who called the witness. The use of the word “*shall*”, further buttresses this interpretation.

9. The discretion to re-examine however shifts from the party who calls the witness to the court **only** in cases where a “*new matter*” is sought to be introduced by the party who calls the witness. In such a case, if the permission is granted by the court, the right to cross-examination resurfaces. In that respect, the re-examination introducing a “*new matter*” is for all intents and purposes, akin to an examination-in-chief.

10. During the course of my own research I came across a judgment in the case of **Muhammad Shahid versus Aqeel and 5 others**<sup>1</sup>. The said judgment, though not binding on me, gives useful insights into the scheme devised by the legislature pertaining to the Article under interpretation. It was held as under: -

*“13. The object of examination-in-chief is to elicit from the witness all the facts or such of them as he can testify in order to prove the case of the party calling him. In contrast, cross-examination tests his credibility by detecting and exposing discrepancies and educing suppressed facts. It need not be confined to the facts to which the witness testified on his examination-in-chief. The right of re-examination arises only after the witness has been cross-examined. As per clause (3) of Article 133, its purpose is to clear an ambiguity or clarify or explain a matter which has cropped up during cross-examination. The use of the word “shall” in this clause shows that the party who has produced the witness has the absolute right to re-examine him where explanation of an issue is required. However, if something new is desired to be introduced, the counsel should seek leave of the court. In such eventuality the adverse party may further cross-examine the matter.*

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<sup>1</sup> 2021 PCr.LJ 537

14. *The Halsbury's Laws of England (Fourth Edition, Volume No.17, page 195, para 280) explains the object and scope of re-examination as follows:*

"On the conclusion of his cross-examination a witness may be re-examined on behalf of the party for whom he has given evidence in chief, for the purpose of explaining any part of his evidence given during cross-examination which is capable of being construed unfavourably to his own side; but no questions may be asked in re-examination which introduce wholly new matters, except by leave of the court, which is given subject to cross-examination on the new matter. Where, however, questions asked in cross-examination let in evidence which would not have been admissible in chief, the witness may be re-examined upon it. Leading questions are not permissible in re-examination."  
(Emphasis added)

11. In light of what has been held above I find that the instant Petition is devoid of merit and is hereby dismissed with no order as to cost. However, the Learned Rent Controller shall ensure that the re-examination is within the parameters elucidated above. Order accordingly.

***JUDGE***

Jamil