

*Order Sheet*  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**C.P. No.S-673 of 2025**

[ Nasir v. Muhammad Hanif and others]

**17.09.2025**

Mr. Shaukat Islam Kumbhar, Advocate for the petitioner.  
 Syed Ale Maqbool Rizvi, Addl. A.G. Sindh.

**ARSHAD HUSSAIN KHAN, J.** The petitioner through instant constitutional petition has challenged the order dated **30.07.2025**, passed by learned VII-Additional District Judge, Karachi-South in Civil Revision No.122 of 2025, whereby the said Civil Revision was dismissed in limine, upholding the order dated **13.05.2025**, passed by the learned Rent Controller-XIII, Karachi-South, through which the application filed by the petitioner under Section 12(2), C.P.C. was dismissed. Both the said orders shall hereinafter be referred to as the “**impugned order**”.

2. The brief facts of the case are that Rent Case No.883 of 2023 was instituted by the respondent, Muhammad Hanif, against one Mst. Najma wife of Muhammad Rafiq (opponent in the rent case), seeking her eviction from *Flat No.3, 1st Floor, Building Sabka Ibrahim Manzil, Ali Changle Compound, Street No.1, Singoline, opposite Hari Masjid, Lyari, Karachi (demised premises)*, on the ground of default in payment of rent, vide order dated 13.03.2024, the learned XIIIth Rent Controller, Karachi-South, allowed the ejectment application ex-parte and directed the opponent to vacate the premises and hand over its vacant, peaceful and physical possession to the respondent within the stipulated period. Thereafter, the petitioner filed an application under Section 12(2) C.P.C. read with Section 151, C.P.C. in the said rent case, seeking to set aside the ejectment order dated 13.03.2024 on the plea that it had been procured through fraud, misrepresentation and concealment of material facts. The learned Rent Controller, however, dismissed the said application, vide order dated **13.05.2025**. The petitioner then challenged that order by filing Civil Revision Application No.122 of 2025, which too was dismissed through the impugned order dated **30.07.2025**. The concurrent findings of both the courts below on the petitioner’s application under Section 12(2), C.P.C. have now been impugned by him through the present constitutional

petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

3. Learned counsel for the petitioner contends that the impugned orders passed by both the courts below are illegal, unwarranted, against the law and have been passed without applying judicial mind; that the courts below have failed to consider the facts and material produced by the petitioner and passed the impugned orders without lawful authority; that both the decisions are suffering from illegalities and irregularities and also suffer from non-reading and misreading of the evidence, as such, the same are not sustainable in the eyes of law and liable to be set-aside.

4. Heard learned counsel for the petitioner and perused the record carefully.

The record reveals that repeated notices of the rent case No. 883 of 2023 against the opponent (Mst. Najma) were issued at the address of the demised premises, which the petitioner himself claims to be in his possession being owner of the same he had given the property to his deceased sister (the opponent, Najma) for residential purposes. In addition to service through ordinary means, notices were also affixed upon the premises, and ultimately publication was made in the *Daily Express* on 22.11.2023. Thereafter, on 07.12.2023, service upon the opponent was held to be good. Subsequently, the rent case was proceeded *ex-parte*, and after recording the evidence of the respondent/applicant, the learned Rent Controller, vide order dated **13.03.2024**, allowed the ejectment application and directed the opponent to vacate the demised premises.

5. The record further reveals that after passing of the aforesaid order, the petitioner, on 21.08.2024, filed an application under Order I Rule 10, C.P.C., asserting that he is the owner of property viz. **Flat No.101**, First Floor, Ibrahim Arcade, Street No.1, Muhallah Singoo Lane, New Kumhar Wara, Lyari, Karachi. The said application was dismissed on 14.11.2024. Thereafter, on 11.12.2024, the petitioner moved another application under Section 12(2) read with Section 151, C.P.C., taking the stance that he is the owner of the premises by virtue of a sale agreement dated 11.03.2019, that the premises had been given to the opponent, his deceased sister, and that no notice had been issued

to the said opponent. The learned Rent Controller, after issuing notice and hearing the learned counsel for the parties, dismissed the petitioner's application, vide order dated 13.05.2025.

6. The petitioner thereafter called the aforesaid order in question by filing a Civil Revision, which too was dismissed vide order dated 30.07.2025. The petitioner has now impugned both the aforesaid orders, dated **13.05.2025** and **30.07.2025**, through the present constitutional petition. For the sake of convenience, the relevant portion of the order dated **30.07.2025**, passed by the learned VII-Additional District Judge, Karachi-South in Civil Revision Application No.122 of 2025, is reproduced hereunder:

*"I am not at all incline with such proposition as being presented by Counsel for the applicant. The Sindh Rented Premises Ordinance 1979 is special legislation and was promulgated it regulates own procedure thus provisions of general law are not applicable otherwise section 20 SRPO 1979 regulates the provisions of CPC applicable in rent case which does not find mention 115 CPC. With regards filing of 12(2) CPC, the same is done on the basis of equitable principles but such principles cannot be stretched in manner where a procedure not provided under the law can be sought reference to. So also merely because rent controller decided an application under section 12(2) CPC by itself not would take away the status of rent controller and make him Civil Court. The case law cited by the counsel indeed speaks what counsel has advanced however, the decision pertains to Islamabad where Islamabad Rent Restriction Ordinance is applicable however on similar score our Honorable Sindh High Court, in the case of United Bank Versus Muhammad Rafi, reported 2005 CLC 1675, wherein an order was passed in rent execution against which a revision was filed and Honorable High Court dismissed the same while dismissing the notion that while deciding civil application rent controller acted as civil court to make revision applicable and it was held that "-Ss. 21 & 22-Civil Procedure Code (V of 1908). S.115-Order passed in execution proceedings-Right of appeal against---Competency---Order passed by Rent Controller in execution under S.22 of Sindh Rented Premises Ordinance, 1979, was appealable under S.21 of said Ordinance---Contention that Rent Controller in execution of order of eviction would convert himself into a Civil Court and order passed during execution proceedings would become revisable under S.115 of Civil Procedure Code, 1908, was not correct-Order passed in execution proceedings by Rent Controller was not amenable to revision under S.115 of Civil Procedure Code, 1908---revision being not maintainable, was dismissed." Therefore when a procedure is not provided under a law then by no stretch any other procedure cannot be introduce under any garb. The revision is not recognized under the rental law. Further, the order if felt aggrieved, the same was to be question in First Rent Appeal provided under section 21 SRPO1979 which caters that any order passed by rent controller not being an interim shall be assailed in appeal*

*within thirty days. The revision thus is wholly not maintainable against the order passed in rental domain. The Impugned order is dated 13-05-2025 while revision has been filed on 18-07-2025 as such after delay of over 30 days thus had it been preferred in 30 days as provided for filing of appeal, perhaps conversion could have been considered in the matter however in attending circumstances, the revision as preferred is not maintainable and accordingly is hereby dismissed in limine with no order as to costs."*

7. From the pleadings, it emerges that the petitioner has set up a claim of ownership in respect of Flat No.101, whereas subject matter of rent proceedings (demised premises) is Flat No.3. Furthermore, despite having notice of the rent case, he failed to participate in the proceedings and allowed the matter to proceed *ex parte*, resulting in the passing of an eviction order against the opponent.

8. It may be observed that sub-section (2) of Section 12, C.P.C. is a special provision, which may be invoked only in limited and exceptional circumstances expressly provided therein. An order, judgment or decree may be challenged under this provision only where: (a) it has been obtained through misrepresentation or fraud, or (b) the court passing it lacked jurisdiction. The scope of this provision is thus narrowly confined. In the present case, the petitioner, despite having notice of the rent proceedings, slept over his rights and failed to approach the court within time, thereby allowing the matter to proceed *ex parte*. Such conduct amounts to gross negligence and indolence. It is a well-settled principle of law that *the law assists the vigilant and not those who slumber over their rights*, a doctrine embodied in the Latin maxim *vigilantibus non dormientibus jura subveniunt*. The rationale is to ensure prompt assertion of legal rights, to avoid distortion or loss of evidence, and to secure finality in litigation by protecting defendants from stale claims. Moreover, the application filed by the petitioner under Section 12(2), C.P.C. fell outside the scope of the said provision, as it lacked the mandatory and specific disclosure of fraud or misrepresentation with all requisite particulars. The application, being not maintainable, was rightly dismissed by the courts below.

9. At the very outset, learned counsel for the petitioner was put on notice to satisfy this Court regarding the maintainability of the present petition, inasmuch as the ejectment order was admittedly passed in respect of Flat No.3, 1st Floor, Building Sabka Ibrahim Manzil, Ali

Changle Compound, Street No.1, Singoline, opposite Hari Masjid, Lyari, Karachi, whereas the petitioner, while claiming ownership of Flat No.101 in the same building, has sought to challenge the order as if it were directed against him. Despite being afforded sufficient opportunities, learned counsel failed to offer any plausible justification for the filing of this petition or to satisfy the Court on the question of maintainability. Even otherwise, no material has been brought on record to demonstrate that the concurrent findings of the courts below are either perverse, suffer from any jurisdictional defect, or result from misreading or non-reading of evidence.

10. It is an admitted position that the order of eviction in respect of the demised premises, passed by the learned Rent Controller, has attained finality, inasmuch as Execution Application No.15 of 2024 was allowed and a writ of possession was issued by the trial court through the bailiff. In these circumstances, this Court, while exercising constitutional jurisdiction, cannot enter into disputed questions of fact, nor can such jurisdiction be invoked as a device to frustrate or halt the lawful orders passed by the courts below.

11. For the foregoing reasons, I am of the considered view that the instant petition is nothing but a futile attempt to delay the execution of a lawful decree. The same, being devoid of merit, is dismissed in *limine*, along with all pending applications.

JUDGE

The record further transpires that on 16.08.2025, one Iqbal son of Muhammad, claiming to be the attorney of the builder of the building, also filed an application under Section 12(2), C.P.C., challenging the aforesaid ejectment order on the ground that it had been obtained through fraud and misrepresentation. However, there is nothing on record to indicate the fate of the said application, whether it remains pending adjudication or has already been disposed of.