

# **HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

**C.P No.S-786 of 2025**

*[M/s AA Joyland (Pvt.) Ltd v. Province of Sindh and 03 others]*

Petitioner by : Through Mr.Zain-ul-Abdin Sahito, Advocate

Respondents by : Nemo

Date of hearing : **26.01.2026**

Date of Decision : **26.01.2026**

## **ORDER**

**ARBAB ALI HAKRO, J.-** The Petitioner, through this petition, calls into question the legality and propriety of the Judgment dated 02.10.2025, passed by the learned II-Additional District Judge, Hyderabad, in First Rent Appeal No.59 of 2022, whereby the appellate Court upheld the findings of default and affirmed the eviction order earlier recorded by the VI-Rent Controller, Hyderabad.

2. The essential facts, shorn of unnecessary detail, are that the petitioner, *M/s AA Joyland (Pvt.) Ltd.*, is a lessee of a commercial premises measuring 11,754.21 sq. ft. situated on the second floor of Boulevard Mall, Hyderabad, under a Lease Agreement dated 10.02.2016 executed with the Mall's management. The agreed rent was payable to Boulevard Mall, which, according to the petitioner, was the duly authorised collecting agent of the private owners, including respondent No.4, by virtue of an Agreement and NOC dated 28.05.2016. In 2021, respondent No. 4 filed Rent Application No. 31 of 2021 before the VI Rent Controller, Hyderabad, alleging a default in the payment of rent. The Rent Controller, through an order dated 20.08.2022, allowed the ejectment application. Boulevard Mall, being arrayed as respondent in the rent proceedings, preferred FRA No.59 of 2022, which was allowed by the learned VII-Additional District Judge on 07.12.2022, setting aside the eviction order.

3. Respondent No.4, thereafter, invoked the constitutional jurisdiction of this Court through C.P No.S-1046 of 2022. Vide Judgment dated 24.12.2024, this

Court remanded the matter to the appellate Court with specific directions. Upon remand, the learned II-Additional District Judge, Hyderabad, through the impugned Judgment dated 02.10.2025, once again upheld the findings of default and sustained the eviction order, directing the petitioner to vacate the premises within sixty days. The petitioner, asserting continuous bona fide payment of rent to the Mall and subsequently to the Nazir pursuant to Court orders, has now invoked Article 199 of the Constitution to assail the impugned Judgment.

4. Learned counsel for the petitioner submits that the petitioner is directly and adversely affected by the impugned Judgment, as it revives the eviction order and exposes the petitioner to imminent dispossession from large commercial premises wherein substantial investment has been made. He contends that the petition is maintainable under Article 199 because the statutory remedy stood exhausted once this Court remanded the matter with specific directions and the appellate Court, instead of independently reevaluating the evidence, merely reiterated its earlier conclusions in disregard of the remand order and in violation of Article 10-A of the Constitution. Learned counsel further submits that the petitioner had filed cross-objections before the appellate Court, which were required to be adjudicated in accordance with law, particularly as the provisions of the Code of Civil Procedure apply to rent proceedings under the Sindh Rented Premises Ordinance, 1979, to the extent they are not inconsistent with the Ordinance. He argues that the principles governing transposition of parties under Order I Rule 10 C.P.C. are fully attracted, as transposition in legal parlance signifies altering the position of a party where the ends of justice so demand, and the petitioner, being the party ultimately affected by the eviction order, was entitled to seek such procedural recourse.

5. On merits, learned counsel maintains that the petitioner never committed any default, as rent was consistently paid to Boulevard Mall, the duly authorised collecting agent of respondent No.4 under the Agreement and NOC dated 28.05.2016 and later deposited with the Nazir pursuant to judicial directions. He argues that no revocation of the Mall's authority was ever communicated, nor

was any notice issued by respondent No.4 asserting direct entitlement to rent. He submits that the premises form part of a large, undivided commercial block, with no demarcation or identification of the portion allegedly owned by respondent No. 4, rendering the eviction order arbitrary and disproportionate. He argues that any dispute between the Mall management and private owners cannot be visited upon the petitioner, who has acted bona fide throughout and fulfilled all contractual obligations. In support of his submissions, learned counsel has relied upon ***PLD 2002 Karachi 542, PLD 1992 SC 590, 2023 MLD 380, C.P No.S-757 of 2021 and 2014 SCMR 1694, PLD 1991 SC 997, 2009 CLC 1089 and PLD 2009 Lahore 407.***

6. Heard learned counsel for the petitioner and perused the available record, including the impugned Judgment, earlier orders of the Rent Controller and Appellate Court and the remand directions issued by this Court. The case law cited at the bar has also been considered.

7. At the outset, it is necessary to recall that the jurisdiction under Article 199 is supervisory in nature. It is neither appellate nor revisional. The Court does not sit as a forum to reappraise evidence or to revisit factual conclusions merely because another view is possible. The touchstone is far narrower whether the impugned order suffers from patent illegality, jurisdictional error or a manifest failure to exercise authority vested in law. This principle has been reiterated time and again by the Supreme Court, which has consistently held that concurrent findings of fact, unless shown to be perverse or based on no evidence, are not to be unsettled in constitutional proceedings.

8. With this framework in mind, the record has been scrutinised. After recording evidence, the Rent Controller returned a finding of default against the tenant. That finding was carried in appeal, not by the present petitioner, but by the Mall management. The petitioner, who was respondent No.2 in the appeal, did not challenge the Rent Controller's order through any statutory mechanism. Instead, the petitioner filed a document styled "No Objection on Appeal," in which it expressly supported the appeal filed by the Mall and prayed that the

tenancy be allowed to continue in accordance with the original agreement. This document is of considerable significance. It demonstrates that the petitioner consciously elected not to assail the Rent Controller's order and instead aligned itself with the appellant's cause. The petitioner did not file cross-objections in the legal sense; nor did it invoke Section 21 of the Sindh Rented Premises Ordinance, 1979, which is the statutory remedy available to a tenant aggrieved by an eviction order. Guidance may be taken from the case of **United Bank Ltd<sup>1</sup>**, wherein the learned Division Bench held that a tenant who, despite service, fails to appear before the Rent Controller and thereafter does not avail the statutory remedy of appeal under Section 21 of the Sindh Rented Premises Ordinance, 1979, cannot invoke the constitutional jurisdiction to challenge the eviction order. It was observed that Article 199 cannot be used as a substitute for the statutory appellate mechanism, nor can it be invoked to cure a party's own negligence or deliberate omission. It was further held that even if the impugned order suffers from legal infirmities, the High Court will decline interference where the party has allowed the order to attain finality by failing to pursue the remedy provided by law.

9. The appellate proceedings thereafter took their course. This Court set aside the first appellate Judgment in a large bunch of petitions and remanded the matter with specific directions. The remand order required the appellate Court to reevaluate the evidence, examine the question of default afresh, consider the effect of the revocation of authority, and determine the fate of the rental deposits. The appellate Court, upon remand, undertook that exercise and delivered the impugned Judgment. The petitioner participated in those proceedings, yet did not seek transposition, did not file any independent challenge and did not assert any statutory right. The appellate Court, after considering the entire record, affirmed the finding of default and upheld the eviction order.

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<sup>1</sup> United Bank Ltd. v. Rent Controller, Karachi (1982 CLC 1154)

10. The question that arises is whether, in these circumstances, the petitioner can now invoke Article 199 to undo the consequences of its own inaction. The answer must be in the negative. The doctrine of alternate remedy is not a mere technicality; it is a substantive rule of restraint that prevents constitutional jurisdiction from being used as a substitute for statutory forums. Where the law provides a complete mechanism for redress, a party cannot bypass that mechanism and seek constitutional relief, particularly when it consciously chose not to avail the statutory remedy at the appropriate time.

11. The petitioner's reliance on the applicability of the Code of Civil Procedure, the concept of transposition under Order I Rule 10, and the filing of "cross-objections" does not assist its case. The document placed on record is not a cross-objection in form or substance. It does not challenge the Rent Controller's findings; rather, it supports the appeal and seeks to continue the tenancy. The jurisprudence on transposition presupposes that the party seeking transposition has asserted a substantive right that requires protection. Here, the petitioner did not assert such a right before the appellate Court. It cannot now, after the appellate Judgment has gone against it, attempt to recharacterise its earlier stance.

12. The argument that the petitioner is an "aggrieved person" because the eviction order ultimately affects it is equally untenable. The law requires not only that a person be affected, but also that they have pursued the remedies available to them. A party that elects not to challenge an adverse order at the statutory stage cannot later claim to be aggrieved for purposes of Article 199. The principle that one cannot approbate and reprobate in the same breath is well-settled. Having supported the appeal and accepted the appellate forum as the proper avenue for redress, the petitioner cannot now turn around and contend that the appellate Judgment is without lawful authority.

13. It is also pertinent that the Supreme Court, in its order dated 31.07.2025, passed in Civil Petitions Nos.141, 142, 143, 171 and 250 of 2025<sup>2</sup>. It has already circumscribed the scope of further constitutional interference by observing that the petitioner may seek an appropriate remedy before the competent forum for any grievance relating to its status or rights, but that the eviction proceedings under the SRPO must proceed in accordance with the statutory hierarchy. This observation reinforces the principle that constitutional jurisdiction cannot be used to reopen factual disputes or to circumvent statutory remedies.

14. In sum, the petitioner has failed to demonstrate any illegality, jurisdictional defect or violation of law in the impugned Judgment. The petition seeks to reopen factual findings and revive a remedy the petitioner consciously chose not to pursue at the appropriate time. Constitutional jurisdiction cannot be invoked to cure such omissions.

15. For the reasons recorded in the foregoing findings, this petition does not meet the threshold for interference under Article 199 of the Constitution. The petitioner, having neither invoked the statutory remedy provided under Section 21 of the SRPO, 1979, nor filed any legally cognisable challenge before the appellate forum, cannot now seek to reopen concurrent findings of default affirmed after remand. The petition, being devoid of merit and not maintainable, is accordingly **dismissed** in *limine*, along with all pending applications.

**JUDGE**

AHSAN K. ABRO

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<sup>2</sup> Referred by the appellate Court in the impugned Judgment in Para No.14 (Page-37 of Court file)