

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-1484 of 2025
(Fatima versus Abdul Qadir & others)

Date	Order with signature of Judge(s)
<u>Fresh Case</u>	Before: Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order : 05.01.2026

Mr. Yasir Ali advocate for the petitioner
M/s Zulfiqar Ali Qureshi & Tufail Ahmed advocates
for the Respondent No.1
Muhammad Niaz, respondent No.3 present in person.
Mr. Sandeep Malani, AAG, along with
S.I. Muhammad Nawaz of P.S. Sachal

O R D E R

Adnan-ul-Karim Memon, J. – The petitioner has filed the captioned Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- (A) *To suspend the operation and execution of the impugned writ of possession, arising out of the rent case, forthwith;*
- (B) *Declare the rent proceedings coram non judice and without lawful authority;*
- (C) *Remand the rent case to the Rent controller, with direction to implead the petitioner and decide afresh after hearing all parties;*
- (D) *Restrain respondents from dispossessing the petitioner from the subject premises in any manner whatsoever;*
- (E) *Grant any other relief deemed just and proper in the circumstances.*

2. It is the case of the petitioner that on 17-11-2011 Muhammad Saleem agreed to sell the Ground Floor Portion, House no: R-2, measuring 120 sq. yds, 'Paradise Homes', Sector 13-A, KDA Scheme 33, Gulzar-e-Hijri, Karachi (hereinafter referred to as the 'demised premises') with the then owner, Muhammad Islam, for a total consideration of Rs. 40,00,000/- . An amount of Rs. 4,00,000/- was paid as earnest money through a pay order, followed by Rs. 22,00,000/- paid on 04-01-2012. The remaining Rs. 16,00,000/- was arranged through Abdul Qadir/ Respondent No.1, who agreed to provide financing on the express condition that the sale deed would be executed in his name only as a security measure, while an irrevocable General Power of Attorney (GPA) coupled with interest would simultaneously be executed in favour of Muhammad Saleem. Pursuant to this arrangement, the sale deed was executed in the name of Respondent No.1, while an irrevocable GPA was executed in favour of Muhammad Saleem, thereby transferring all beneficial and proprietary rights to him in

terms of Section 202 of the Contract Act, 1872. Petitioner submitted that a power of attorney coupled with interest is irrevocable, and the nominal vendee stands divested of beneficial ownership. She added that after the lapse of more than ten years, Muhammad Saleem, in exercise of his lawful authority and ownership rights, sold the subject premises to the petitioner/ his widowed sister, for a lawful consideration of Rs. 50,00,000/-, whereupon vacant physical possession was handed over, and the petitioner became the lawful transferee and occupant of the property. Subsequently, Respondent No.1, acting with mala fide intent, initiated multiple vexatious proceedings, including an ex parte civil decree now under appeal before the appellate Court and a rent case against one Muhammad Niaz, who was never his tenant. Due to persistent threats and harassment, Muhammad Niaz vacated the premises; however, she stressed that Respondent No.1, through concealment and misrepresentation, fraudulently obtained an ex parte eviction order against the tenant and is now seeking execution of a writ of possession with police assistance via impounded order. The petitioner, to protect her lawful possession, availed all available remedies, including applications under Order I Rule 10 (2) CPC and Section 12(2) CPC, as well as First Rent Appeal (FRA), all of which were dismissed. She emphasized that the execution of the impugned writ would result in the illegal and forcible dispossession of a widow, without due process of law and in violation of her constitutional rights. Although the Sindh Rented Premises Ordinance, 1979, provides limited statutory remedies, the present case squarely falls within the recognized constitutional exceptions, as the proceedings are *coram non judice*, Respondent No.1 lacks *locus standi* as landlord, the petitioner was denied the right of hearing, and fraud vitiates all proceedings. She submitted that the constitutional jurisdiction is available to be invoked where statutory forums act without jurisdiction, in excess of authority, or in violation of fundamental rights.

3. Learned counsel for the petitioner contended that the rent proceedings are void *ab initio*, as Respondent No.1 was never the landlord of Muhammad Niaz. He submitted that fraud vitiates all judicial acts; therefore, the impugned eviction order is non-*est* in the eyes of the law. It is further argued that the petitioner's fundamental rights under Articles 4, 9, 10-A, 23, and 24 of the Constitution have been violated. Learned counsel also submitted that Section 202 of the Contract Act protects the irrevocable GPA, thereby extinguishing any proprietary claim of Respondent No.1. It was contended that the Rent Controller acted in excess of jurisdiction by passing orders affecting the rights and possession of a non-party. He further argued that imminent execution would cause

irreparable loss, homelessness, and grave miscarriage of justice. Reliance has been placed on Bolan Beverages (PVT) Limited v Pepsico INC and 4 others **PLD 2004 SC 860**, Abdul Rahim v Mukhtar Ahad and 6 others **2001SCMR 1488**, Abdul Qadir v Province of Sindh and others **2025 CLC 312**, Abdul Habib Rajwani v Messrs Brothers Industries Ltd. and others **2007 YLR 590**, Messrs Time N Visions International (Pvt) Ltd v Dubai Islamic Bank Pakistan Limited **PLD 2007 Karachi 278**, Messrs Business Computing International (Pvt) Limited v IBM World Trade Corporation **1997 CLC 1903**, and Muhammad Aslam and others v Absar Fatima and others **2011 CLC 1521**. He prayed to allow this Petition.

4. Learned counsel for the respondent supported the impugned order and submitted that the Respondent/Applicant instituted Rent Case No. 12 of 2022 before the Rent Controller 1, Malir Karachi, in respect of the rented premises, as discussed supra. He submitted that this rent case was filed against the Opponent/ Mr. Niaz Ahmed S/o Allah Dittah. And as per para no. 5 of the Rent Application, 'that as per clause 1 (tenancy agreement dated: 01-12-2021, the tenancy period consists of 11 months, which started on 01-12-2021 and expired on 30-12-2022.' He argued that the Respondent/Applicant is a senior citizen of Pakistani origin, holding Pakistan Origin Card No. 70258-6370282-1, and is currently residing in Singapore with his family. Therefore, he is appearing through a validly constituted Special Power of Attorney, executed before this High Commission of Pakistan in Singapore and duly attested by the Ministry of Foreign Affairs camp office in Karachi. He argued that during the pendency of the above-mentioned rent case, an application filed by the Petitioner under Order I Rule 10 of the Code of Civil Procedure, 1908, was dismissed by the learned Rent Controller-1, Malir, Karachi, through a detailed order dated 03.10.2022. It is further submitted that the Petitioner willfully chose not to challenge the said order, which thus gained its finality. The same was also observed by the Rent Controller in the final order of eviction dated 31-01-2024. He submitted that the said forum is a special forum for determining disputes about Landlord and Tenant under a special statute, which provides a special mechanism. He submitted that since the subject order was never assailed before any higher forum, the same has attained finality in the eyes of law and is, therefore, hit by the principle of *res judicata*. He argued that the Rent Controller 1, Malir-Karachi, after recording the evidence of the Applicant/Respondent allowed the Rent Application for ejectment of the tenant on account of willful default in payment of rent vide order dated: 31-01-2024 with directions to the Opponent/tenant to vacate and handover the demised

premises to the Respondent/Applicant within the period of (30) days after the passing of the order. He submitted that the Petitioner, without having any locus standi, filed First Rent Appeal No. 14 of 2024 against the said order dated 31-01-2024, which was dismissed by the Appellate Court, i.e., Additional District Judge VI, Malir at Karachi vide Judgement dated 27-05-2024 and observed the following while dismissing the FRA:

'9. Upon careful perusal, it appears that the impugned order dated 31-01-2024 prior to the instant appeal has already been challenged by the Appellant in a rent case before the learned Rent Controller/trial court through an application under Section 12(2) CPC, which is pending for a decision. Subsequently, the instant appeal was filed on the same grounds of misrepresentation, concealment of facts, and fraud. The Appellant cannot pursue both remedies for setting aside the same order on identical grounds before two different courts. Therefore, this Court is of the humble view that the instant appeal is not maintainable.'

He further argued that the Petitioner has willfully suppressed this material and relevant piece of judicial record, as there is not even a single mention of FRA No. 14 of 2024 decided by the learned Additional District & Sessions Judge-VI, Malir, Karachi, in the entire petition. He submitted that again the Petitioner without having any locus standi, filed an Application under section 12(2) of the Code of Civil Procedure, 1908, before the Rent Controller 1, Malir-Karachi, against the said order for ejection dated 31-01-2024, which was duly dismissed by the Trial Court, i.e., Rent Controller 1, Malir - vide Order dated: 06-07-2024. The learned Rent Controller observed the following while dismissing the Application u/s 12(2) CPC:

'Heard both parties and carefully gone through the available record. It is a matter of record that the present rent application/case was allowed on 31-01-2024, and during the proceedings of the rent case, the applicant Fatima Rasheed filed the application under Order 1 Rule 10 CPC, which was dismissed by this court vide order dated 03-10-2022. Perusal of the record shows that the order dated 31-01-2024 passed by this court which was challenged by the applicant through FRA bearing No. 14/2024 which was also dismissed by the Honorable Additional Sessions Judge-VI Malir Karachi vide order dated 27-05-2024. The applicant was required to satisfy this court about the element of fraud and misrepresentation in obtaining the order, which was not proved by the applicant. The present applicant, during the proceedings of the rent case, appeared and introduced himself as an intervener necessary party, which was dismissed by this court. Now the same applicant is filling the application under section 12(2) CPC with allegation of fraud and misrepresentation ever played by the applicant to obtain the order from this court. The order of this court is maintained by the Honorable Appellate Court in FRA No. 13/2024. The applicant in the present application under section 12(2) CPC failed to satisfy this court about any fraud and'

misrepresentation played by the Decree Holder/applicant; therefore, the present application is hereby declined with no order as to cost.'

He next submitted that yet again the Petitioner without having any locus standi at all, for the second time in the same rent case, filed First Rent Appeal No. 20 of 2024, this time impugning the order dated 06-07-2024 on the Application u/s 12(2) of the Code of Civil Procedure, by alleging the same allegations in the previous two rounds of litigation, which was duly dismissed by the Appellate Court i.e., Additional District Judge III, Malir at Karachi vide Judgement dated 26-08-2024 along with the cost vide Decree dated: 20-09-2024 amounting to Rs. 308, 833/- (Rupees Three Lac Eight Thousand Eight Hundred Thirty-Three Only) which is yet to be satisfied by the petitioner. The learned Appellate Court observed the following while dismissing the FRA:

'25. The appellant failed to prove any substantial ground to maintain her application under section 12(2) CPC on the grounds of fraud for the reason that the appellant was in knowledge of the proceedings when she filed the application under Order 1 rule 10 and at the time when the eviction order was passed, which she assailed before first appellate court. There exists no reason for misrepresentation by the respondent for the reason that during rent proceedings before the rent controller, he produced sufficient documentary and oral evidence against which nothing remained unrebutted and unchallenged. The appellant had also failed to prove that the ejection proceedings was the outcome of the forum lacking jurisdiction to adjudicate the matter under section 15 of the SRPO, 1979. After hearing the parties and perusal of the record, this court is of the firm view that the impugned order was rightly passed by the learned Rent controller and therefore could not be interfered. Thus, Point No. 1 is answered in the negative.'

Point No. 2:

The upshot discussion and reviewing the record, this court concludes that the impugned order issued by the learned Rent Controller was legal and proper and does not warrant any interference. Accordingly, Point No. 2 is answered in the negative and the instant appeal is hereby dismissed with cost of the proceedings. Office to facsimile the judgment to the learned trial court and further directed to prepare the decree accordingly.'

He submitted that the instant petition is not maintainable as it is barred by res judicata, since the petitioner's earlier Constitutional Petitions No. 1109 of 2024 and 1403 of 2024 were dismissed by this Court on 17-11-2025, a fact deliberately suppressed to mislead this Court, disentitling the petitioner from discretionary relief. The petition is also incompetent as it was filed directly without approaching the Supreme Court, despite earlier petitions having been dismissed on merit. No violation of law or illegality by the respondent has been shown; hence, no cause of action arises. The petition is frivolous, vexatious, mala fide, and filed to deprive the respondent of lawful possession, warranting dismissal with special costs. He argued that the respondent, as owner/landlord, lawfully rented the property to Mr. Niaz Ahmed under a tenancy agreement dated 01-12-2021, and Rent Case No. 12 of 2022 was rightly allowed by the 1st Rent Controller, Malir, vide order dated 31-01-2024, after unrebutted evidence.

All related proceedings, including the petitioner's intervener application, rent appeals, and civil challenges to title, have attained finality. The Sindh Rented Premises Ordinance, 1979, provides a complete mechanism independent of title disputes. The petitioner lacks locus standi and has repeatedly litigated the same issues to prolong the matter and waste the Court's time. Learned counsel relied upon cases of Trading Corporation of Pakistan v Devan Sugar Mills Limited **PLD 2018 SC 828**, Jubilee General Insurance Co Ltd, Karachi v Ravi Steel Company Lahore **PLD 2020 SC 324**, Fareed Ud Din Masood v Additioal District Judge Bahawalur and others **2019 SC 842**, Khuda Bakash through L.Rs v Muhammad Yasin **1992 MLD 2011**, Tanveer Siddiqui v Muhammad Rashid **2010 YLR 1851**, Nasir Khan v Nadia Ali Butt and others **2024 SCMR 452**, Muhammad Nisar v Izhar Ahmed Shaikh and others **PLD 2014 SC 347**, Abdul Rasheed v Maqbool Ahmed and others **2011 SCNR 320**, Barkat Masih v Manzoor Ahmed through L.Rs **2006 SCMR 1068**, Muhammad Anwar and others v Mst. Ilyas Begum and others **PLD 2013 SC 255**, 2011 SCMR 320, 2006 SCMR 1068, 2010 YLR 1851, MLD 1992 Karachi 2011, PLJ 2003 Karachi 134. Respondent No.02 relied upon case laws: 2023 SCMR 992, 2021 SCMR 1433, PLD 2020 SC 641, and prayed to dismiss the petition with high cost.

5. Muhammad Niaz, Respondent No. 3, present in person, submitted that he had already vacated the subject premises long ago and is no longer a tenant of the petitioner. Accordingly, the present petition is liable to be dismissed as against him. Learned AAG has prayed for dismissal of the petition.

6. I have heard the learned counsel for the parties and perused the material available on record and case law cited at the bar.

7. The petitioner has failed before all forums, including this Court, and her purported Sale Deed stands cancelled, though stated to be under appeal, rendering her, for the present, not the owner of the subject premises. The issues raised have already been adjudicated. The instant petition is barred by law, hit by res judicata, constructive res judicata, estoppel, acquiescence, and Order II Rule 2 CPC, suffers from concealment of material facts, and discloses no cause of action. Repeated litigation on the same facts amounts to abuse of process. All relevant orders have attained finality under the Sindh Rented Premises Ordinance, 1979. Consequently, the petition is not maintainable and liable to be dismissed, as constitutional jurisdiction cannot be invoked to re-agitate

settled matters. An excerpt of the order dated 16.12.2025 passed in Execution No. 6 of 2024 is reproduced as under:-

"By this order, I intend to dispose of the present rent execution application bearing No. 06/2024 filed by the D.H./Applicant against the J.D/Opponent.

02. *Heard Decree Holder/Applicant side and perused the record.*

03. *Perusal of the record indicates that the instant rent case was allowed by this Court vide order dated 31.01.2024 with directions to J.D/Opponent to vacate the demised premises within 30 days but till to date, the J.D/Opponent has failed to vacate the same. Besides, this in the present execution application, the J.D/Opponent also failed to file objections on the execution application.*

04. *Today, none has appeared from the J.D/Opponent side. The record indicates that no stay order is operating against the ejectment order dated 31.01.2024 before any appellate forum, as such, further adjourning the matter would be against the norms of justice as well as tantamount to depriving the D.H. from his legal right.*

05. *In the light of the above circumstances, I am of the view that there is nothing on record in the rebuttal of the present execution application. Under such circumstances, the instant execution application is allowed. Let writ of possession through Nazir be issued against the judgment debtor/Opponent or any other person holding possession, for handing over the peaceful, vacant, and physical possession of demised premises to the decree holder/applicant. Order accordingly."*

8. It is settled law that the constitutional jurisdiction of this Court under Article 199 of the Constitution is supervisory and not appellate. It cannot be invoked as a substitute for a statutory appeal or for re-appraisal of evidence, particularly in Ordinance, 1979. It is well settled that the appellate authority under the said Ordinance is the final statutory forum and that mere disagreement with its findings does not warrant interference in constitutional jurisdiction; a principle consistently followed by this Court. The settled jurisprudence thus makes it abundantly clear that the High Court cannot be converted into a further fact-finding or appellate forum, and interference is permissible only in exceptional circumstances such as lack of jurisdiction, mala fides, or patent illegality, none of which permit reopening factual determinations already concluded by the competent appellate authority. Applying the above principle to the present case, it is observed that the learned Courts, while passing the orders, have examined the entire record, re-evaluated the oral and documentary evidence, and have given detailed reasons for disagreeing with the analogy so put forward by the petitioner. The findings recorded by the Appellate Court, including this Court in the earlier round of litigation, cannot be ignored merely because they are adverse to the petitioner.

9. In such circumstances, a fresh constitutional petition is not maintainable, particularly when no jurisdictional defect, patent illegality, or violation of fundamental rights is made out that would justify

interference under Article 199 of the Constitution. The case law relied upon by the petitioner's counsel is of no help to him at this stage, when this court has already rejected the claim of the petitioner in an earlier round of litigation. An excerpt of the order dated 17.11.2025 passed in C.P. No. S- 1109 of 2024 and C.P. No. S- 1403 of 2024 is reproduced as under:-

“ Since a common question of law is involved in both these petitions, both petitions are being disposed of through this common order.

2. *The rent proceedings were initiated by Abdul Qadir, Respondent No.1 in the instant petition, and vide order dated 31.01.2024, the ejection application under Section 15 of the Sindh Rented Premises Ordinance, 1979 was allowed. During the pendency of the proceedings, an application under Order 1 Rule 10 CPC was filed by the petitioner before the trial Court on the ground that she may be impleaded as a necessary party. The said application was declined by the trial Court as she was not found to be an appropriate or necessary party. No Court, as she was not found to be an appropriate or necessary party. No proceedings were initiated by the petitioner against the order of the trial Court dismissing her application under Order 1 Rule 10 CPC. Thereafter, an application under Section 12(2) CPC was filed, which was prima facie barred by the principle of election of remedies. Once the petitioner had chosen the remedy of seeking impleadment as a party to the proceedings, she was required to pursue that remedy and challenge the adverse order in accordance with the law. By not challenging the said order, the matter attained finality.*

Since there is no order seeking ejectment of the petitioner, and the order under challenge was passed against Mohammad Ameen, who is not before this Court, no relief can be granted to the petitioner in terms of Section 12(2) CPC, which speaks of reading an order on the ground of misrepresentation, fraud, or defect of jurisdiction.

No illegality or infirmity has been pointed out in the impugned order passed by the trial Court; this petition, along with pending applications, being devoid of merit, is dismissed.

The petitioner is already engaged in litigation before the competent court of law, where the issue of title will be determined after affording parties an opportunity of hearing, and shall be adjudicated in accordance with law.

Office to place a copy of this order in the connected matter.”

10. For the foregoing reasons, I am of the considered view that this case does not warrant interference in the exercise of constitutional jurisdiction under Article 199 of the Constitution. However, the issue of possession of the subject premises shall be determined by the executing Court in civil proceedings, during the execution, as the alleged tenant has already vacated the subject premises, as informed by the parties. Consequently, this Constitutional Petition is dismissed, being devoid of merit, along with all pending applications, if any. The parties shall, however, bear their own costs.

JUDGE