

THE HIGH COURT OF SINDH KARACHI

C. P. No. S – 603 of 2026

[Shan Saleem versus Mrs. Sherbano Shabbir Miabhoy & another]

Petitioner : Shan Saleem son of Saleem Mustafa
through Mr. Shaikh Saqib Ahmed,
Advocate.

Respondent No.1. : Mrs. Sherebano Shabbir Miabhoy
wife of Shabbir Moiz Miabhoy
through Mr. Shajee Siddiqui,
Advocate.

Date of hearing : 27-07-2026

Date of decision : 27-07-2026

ORDER

Adnan Iqbal Chaudhry J.- Petitioner, as tenant of the demised premises, prays for a writ against order dated 06.05.2026 passed by the Rent Controller, Clifton Cantonment in Rent Case No. 83/2025, whereby an adjournment application made by Petitioner's counsel was dismissed and the Petitioner's evidence was closed for failing to file affidavit-in-evidence as directed on 01.04.2026 and 15.04.2026. An application to recall such order was also dismissed by the Rent Controller on 17.06.2026 on the ground of delay.

2. Learned counsel for the Petitioner submits that said orders are perverse inasmuch as the diary of the Rent Controller shows that on 01.04.2026 the Petitioner had cross-examined the witness of Respondent No.1 (landlord), the case was adjourned to 15.04.2026 for further cross-examination when it was completed, and then the case was adjourned to 29.04.2026 for the Petitioner's affidavit-in-evidence, on which date the Rent Controller was absent and the case was adjourned to 06.05.2026 for same purpose. He submits that on the given date the Petitioner's counsel was travelling to Lahore, hence the adjournment application, which was dismissed in a cursory manner.

3. Before merits of the case could be examined, learned counsel for Petitioner was put on notice to satisfy the Court on the maintainability of a writ petition to challenge orders passed by the

Rent Controller under the Cantonments Rent Restriction Act, 1963. He submits that since the impugned order for closing the Petitioner's evidence is an interim order, it is not appealable under section 24 of said Act, which provides an appeal only from an order which is "not an interim order", hence a constitution petition is maintainable. On the other hand, learned counsel for Respondent No.1 submits that where the statute bars an appeal, such bar cannot be circumvented by way of a constitution petition. In that regard he also draws attention to sub-section (4) of section 24 of said Act which stipulates that no order of the Rent Controller shall be called in question by any legal proceedings except by way of an appeal under section 24.

4. Heard learned counsel and perused the record.

5. It is by now settled law that an interim or interlocutory order passed by the Rent Controller under the Cantonments Rent Restriction Act, 1963, so also under the Sindh Rented Premises Ordinance, 1979, should not be reviewed in writ jurisdiction when both statutes expressly bar an appeal against such order. The ratio for such non-interference was reiterated by the Supreme Court of Pakistan in *President, All Pakistan Women Association, Peshawar Cantt v. Muhammad Akbar Awan* (2020 SCMR 260) as follows:

"It is settled law that when the Statute does not provide the right of appeal against certain orders, the same cannot be challenged by invoking the constitutional jurisdiction of the High Court in order to gain a similar objective. Where a Statute has expressly barred a remedy which is not available to a party under the Statute, it cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court.

In the present case, the intent of the Legislature to keep out interlocutory/interim orders from the scope of appeal is not difficult to understand. It is meant to curtail delays, piecemeal and fractured litigation at various fora at the same time. In our view, such orders cannot be challenged under the guise of invoking the constitutional jurisdiction of the High Court because the same would tantamount to negating the provisions of the Statute itself and rendering the bar imposed by the Legislature in the interest of expeditious disposal of rent matters totally redundant. The High Courts exercising constitutional jurisdiction must be fully cognizant and conscious of this Rule and strictly adhere to the same in the interest of advancing the policy of law and delivering expeditious justice in accordance with the law and the Constitution. Even otherwise, constitutional jurisdiction is equitable and discretionary in nature and should not be exercised to defeat or bypass the purpose of a validly enacted statutory provision."

6. Since the petition acknowledges that the impugned order is in the nature of an interim order as the Rent Case has yet to be decided, this Court is not called upon to examine whether the impugned order is in fact an interim order or not within the meaning of section 24 the Cantonments Rent Restriction Act, 1963.

7. As regards the submission by Petitioner's counsel that the impugned order was otherwise harsh and unwarranted in the facts of the case, I am afraid such submission could only have been examined if the Petitioner had crossed the threshold of maintainability of a constitution petition. A some-what similar argument was rejected by a learned Division Bench of this Court in *Sattar v. Zaki Ahmad* (1995 MLD 1146) by observing:

"It will thus be seen that even if the order of the learned Controller be assumed to be illegal, not merely that, even if it is assumed to be suffering from a jurisdictional error, the fact remains that an appeal under section 21 of the Sindh Rented Premises Ordinance, 1979, would still lie against the final order and an interlocutory order not being appealable under section 21, aforesaid invocation of Constitutional jurisdiction of this Court may be nothing more than short-circuiting the mandates of the Ordinance. What is more, an alternative remedy contemplated by the Rent Ordinance being available, the constitutional jurisdiction is, at any event, arguably barred."

8. In view of the foregoing binding precedents, the petition is dismissed as not maintainable.

JUDGE