

IN THE HIGH COURT OF SINDH AT KARACHI

Const: Petition No. S-673 of 2026

Petitioner Mrs. Zunaira : Through Mr. Rashid Hussain, Advocate
Respondents Muhammad : Nemo
Yousuf & others
Date of Hearing : 03.08.2026
Date of Judgment : 24.08.2026

JUDGMENT

Muhammad Saleem Jessar, J.- By means of instant Constitutional Petition, petitioner, Mrs. Zunaira, has challenged the Order dated 16.6.2026 passed by the Rent Controller, Clifton Cantonment, Karachi in Rent Case No.107 of 2025, whereby the application moved by the petitioner seeking dismissal of rent proceedings, was dismissed. The petitioner has also challenged an other order of the same date viz. 16.6.2024 passed under Section 17(8) of the Cantonment Rent Restriction Act, 1963 directing the petitioner to deposit future monthly rent @ of Rs.3,00,000/- (Rupees three lac only) per month from July, 2026 onward in the Court of Controller of Rent, Clifton Cantonment before 5th of each month. The petitioner was also directed to deposit arrears of rent amounting to Rs.30,00,000/- (Rupees thirty lac only) for the period from September, 2025 to June, 2026 on or before 16.7.2026.

2. Brief facts of the case are; that respondents No. 1 and 2 filed Rent Application under Section 17 of Cantonment Rent Restriction Act, 1963 mainly on the grounds of default in payment of monthly rent and personal *bonafide* need, stating therein that they, being lawful owners and landlords of Bungalow No. G-26/11, Block-8, Kehkashan, Clifton, Karachi, entered into a tenancy agreement dated 02.12.2024 with petitioner Mrs. Zunaira, whereby the premises in question was rented out to her at the monthly rent of Rs. 3,00,000/-, with a security amount paid by the petitioner, so also one month's advance rent of Rs. 300,000/-. The tenure of tenancy was 11 months commencing from 01.11.2024 and ending on 20.09.2025. It was further stated that upon expiry of tenancy period the respondents / applicants requested the petitioner / tenants to vacate the demised premises; however, instead of vacating the same she filed Civil Suit No. 1094 of 2025 for permanent

injunction; however, the same was dismissed vide order dated 27.10.2025. Despite such dismissal, the petitioner / tenant did not vacate the premises. She also committed default in payment of rent from September, 2025. Along with the rent application, the respondents/applicants also filed an application under Section 17(8) for passing tentative rent order for paying future monthly rent as well as depositing arrears of the rent. The petitioner/opponent contested said application and denied the execution of aforesaid tenancy agreement dated 02.12.2024. It was further asserted that, in fact, the premises in question was rented out to her by one Abdul Rehman son of Abdul Sattar through written tenancy agreement dated 01.12.2024 at the monthly rent of Rs.3,00,000/-. She also denied the allegation of committing default in payment of monthly rent and submitted that rent upto December, 2025 has been paid by her. She also stated that with the permission of landlord Abdul Rehman, she incurred an expenditure of approximately Rs.75,00,000/- on the renovation of the Bungalow as the same was in dilapidated condition.

3. After hearing the Advocates for the parties, Rent Controller allowed aforesaid Application in the terms as stated above. The respondents / applicants were permitted to withdraw future monthly rent from July, 2026 onwards as well as the arrears of rent amounting to Rs.18,00,000/- from January, 2026 to June, 2026; however, they were not allowed to withdraw the disputed amount of Rs.12,00,000/- for the period from the September, 2025 to December, 2025.

4. Besides, petitioner had also moved an application for dismissal of rent case. Vide order dated 14.04.2026, the petitioner / opponent was directed to file written arguments in support of said application; however, they failed to do so. Accordingly, said application was dismissed vide another order of the same dated i.e. 16.06.2026 which has also been impugned by the petitioner in instant petition.

5. I have heard learned counsel for the petitioner and also perused the material made available before me on the record.

6. Learned counsel for the petitioner submitted that the impugned orders have been passed by the Rent Controller without properly taking into consideration the pleas raised by the petitioner, so also the relevant laws. It was further submitted that without first deciding the issue of relationship of

landlord and tenant between the parties, as the petitioner had pleaded that the tenement in question was rented out to her by one Abdul Rehman vide tenancy agreement dated 01.12.2024, the Rent Controller in a hasty and mechanical manner dismissed the application moved by the petitioner for dismissal of rent application on aforesaid ground, so also allowed the application moved by the respondents/applicants for deposit of future monthly rent as well as alleged arrears of rent. It was further submitted that at no point of time any tenancy agreement was entered into between the parties and, in fact, it was aforesaid Abdul Rehman, who had rented out the premises in question to the petitioner. It was further submitted that vide order dated 14.04.2026, petitioner's counsel was required to file written arguments in support of the application moved on behalf of the petitioner for dismissal of rent proceedings; however, due to carelessness and negligence of her previous counsel, the same could not be deposited, nor the counsel apprised the petitioner of such fact. It was averred that in case her previous counsel would have properly pursued the case, her application would not have been dismissed. It was submitted that the petitioner herself was very keen and vigilant; however, as her counsel kept her in dark, said impugned order was passed against her. It was lastly prayed that in view of above submissions, instant petition may be allowed and the impugned orders may be set aside. In support of his contention, learned counsel relied upon the case of Muhammad Nazeer Vs. Ghulam Hussain & another reported in 2023 CLC 1070 [Lahore (Rawalpindi Bench)].

7. At the very outset, it may be observed that it is now well settled that where a question of maintainability of a case/legal proceeding is involved, such question is to be decided in the first instance before touching the merits of the case. It may be observed that vide order dated 20.7.2026, learned counsel for the petitioner was required to examine aforesaid case of **PRESIDENT, ALL PAKISTAN WOMEN ASSOCIATION**, (supra) decided by learned Apex Court and then satisfy the Court on the maintainability of instant petition.

8. Learned counsel for the petitioner submitted that the impugned order, being an interim order, is not appealable under Section 24 of the Cantonment Rent Restriction Act, 1963, therefore, a Constitutional Petition is maintainable; however, he has not been able to place on record any

material thereby showing that aforesaid judgment of Honourable Court has been overruled by any subsequent judgment of the Supreme Court. Even, no other case-law of Hon'ble Supreme Court has been cited wherein contrary view has been taken.

9. It seems that aforesaid legal issue has been decided by the Superior Courts in various cases. In the case of **PRESIDENT, ALL PAKISTAN WOMEN ASSOCIATION, PESHAWAR CANTT Vs. MUHAMMAD AKBAR AWAN and others**, reported in 2020 SCMR 26, while elaborately discussing this point, Honourable Supreme Court, held as under:

“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.

*8. 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 exercise to defeat or bypass the purpose of a validly enacted statutory provision. This Court has repeatedly held to that effect in a number of cases including *Mushtaq Hussain Bukhari v. The State* (1991 SCMR 2136), *Mohtarma Benazir Bhutto, MNA and Leader of the Opposition, Bilawal House, Karachi v. The State* (1999 SCMR 1447), *Mst. Seema Begum v. Muhammad Ishaq and others* (PLD 2009 SC 45) and *Muhammad Raza Hayat Hiraj v. Election Commission of Pakistan* (2015 SCMR 233), *Saghir Ahmed Naqvi v. Province of Sindh* (1996 SCMR 1165) and *Muhammad Iftikhar Mohmand v. Javed Muhammad* (1998 SCMR 328).”*

10. In another case reported as **Mohtarma BENAZIR BHUTTO, M.N.A. AND LEADER OF THE OPPOSITION, BILAWAL HOUSE, KARACHI Vs. THE STATE** (1999 SCMR 1447), it was held by the Apex Court as under:

"12. It is well settled that orders at the interlocutory stages should not be brought to the higher Courts to obtain fragmentary decisions, as it tends to harm the advancement of fair play and justice, curtailing remedies available under the law, even reducing the right of appeal."

11. In view of above, it is patently clear that instant Constitutional Petition, wherein interlocutory orders passed by the Rent Controller have been challenged, is not maintainable. In the circumstances, this petition is liable to be dismissed on this score alone.

12. However, it seems that even on merits the petitioner does not have a good case.

13. From scrutiny of the record it appears that the main plea raised by the petitioner, rather the bone of contention in the present case, is that there is no relationship of landlord and tenant between the petitioner and respondents No.1 and 2 and that no tenancy agreement was executed between them. In fact, according to the petitioner, the tenement in question was rented out to her by one Abdul Rahman at the monthly rent of Rs.3 Lac. It is further plea of the petitioner that the tenancy agreement dated 2nd December, 2024, which is claimed by the respondents to have been between the parties, is a forged document. She claims that, in fact, aforesaid Abdul Rahman had rented out the premises in question to her vide Tenancy Agreement dated 1st December, 2024 at the monthly rent of Rs.3,00,000/- (Rupees three lacs only).

14. It appears that said assertion of the petitioner, is contrary to the material available on the record.

15. In fact, applicant / respondent No.1, Mohammad Yousuf, is real son of aforesaid Abdul Rahman, whereas applicant / respondent No.2, Mohammad Siddiq, is his son-in-law. In para 9 of the Memo of instant petition, the petitioner has stated that he had filed Suit No. 1094 of 2025 for permanent injunction in order to get protection of her possession and contractual right. A copy of the plaint in said civil suit is available at page 63 of the court file which reflects that the petitioner, being the plaintiff, has arrayed said Abdul Rahman as defendant No.1, whereas defendants No.2 and 3 are Mohammad Yousuf and Mohammad Siddiq viz. respondents No.1 and 2 in the present petition, who had filed ejectment application against the petitioner before the

Rent Controller. This belies and severely contradicts the plea of the petitioner that said Mohammad Yousuf and Mohammad Siddiq have no concern with the tenement in question and that aforesaid Abdul Rahman is the sole owner / landlord of subject premises. It is not understandable that, if respondents No.1 and 2 have no concern with subject tenement and that, as per the petitioner, the tenancy agreement relied upon by them is a forged document, then what was the fun in impleading them as defendants in the civil suit filed by her? In said suit, the petitioner, *inter alia*, sought following reliefs:

“2. To grant permanent injunction against the all defendants not to vacate the suit property without due course of law.”

16. Again, when the respondents No.1 and 2 were not the owners of the premises in question, then as to why she made aforesaid prayer against?

17. Apart from above, in para 29 of the memo of petition, the petitioner has stated that said Abdul Rahman had moved an application dated 15.11.2025 to SHO, PS Clifton, a copy whereof has been filed by the petitioner along with memo of petition as Annexure ‘G’ at page 271 of the court file. According to the petitioner, said application shows that said Abdul Rahman was the main dealing person in negotiating the deal of demised premises and it was he, who was following up the rent case. On the face of it, such assertion seems to be misconceived. Needless to emphasize that if a person is dealing and following up proceedings of any particular case, such conduct and act on his part, shall not vest in him the proprietary and ownership rights. Moreover, from a bare perusal of said application, it seems that in para 2 of the application, Abdul Rahman has stated, “ *That my son Yousuf Abdul Rahman and my son in law Siddiqui Jamal are owner of Bungalow No.G26/11, Block 8, Kehkashan Clifton, Karachi.*” What else is required to prove the ownership of respondents No.1 and 2, when Abdul Rahman, whom the petitioner claims to be the owner and landlord of the tenement in question, himself admits that respondents No.1 and 2 are the owners of the tenement in question. It may be observed that the petitioner does not deny her status of being a tenant. It is also an admitted position that respondent No.1, Mohammad Yousuf, is real son of said Abdul Rahman, while respondent No.2, Mohammad Siddiq, is his son-in-law. They are not strangers to said Abdul Rahman. In such a situation, the petitioner’s counsel has not been able to satisfy the Court as to what is the legal impediment which prevents / obstructs the petitioner to pay future

monthly rent and to deposit arrears of the rent, which, she being a statutory tenant, is her liability and legal obligation.

18. So far as the plea raised on behalf of the petitioner relating to negligence on the part of her previous counsel, which resulted in rejection of her application for dismissal of rent proceedings and passing of tentative rent order against her, is concerned, suffice it to say that it is a settled principle of law that *any negligence on the part of an advocate will be binding on the person who has engaged the said advocate*. A litigant having himself engaged a counsel, cannot take shelter of his advocate's negligence and carelessness in pursuing the case. In this context, reference may be made to the case of **ALTAF-UR-REHMAN Vs. SHAMS UL QAMAR**, reported in **2003 MLD 1836 [Peshawar]**, wherein it was held as under:

"A party does not discharge his obligation to conduct the case or to defend it by engaging an advocate, but it owes a duty to the Court to ensure that the case is properly and diligently prosecuted or defended. Any negligence on the part of his advocate will be binding on him as held in Safiullah Siddiqui v. Karachi Electric Supply Corporation Ltd. (1987 SCMR 926). Similarly in the case of Zulfiqar Ali v. Lal Din and another (1974 SCMR 162) the august Supreme Court observed as follows:--

"The mere fact that a litigant has engaged a counsel to appear on his behalf does not absolve him of all responsibility. It was as much his duty as that of the learned counsel engaged by him to see that the appeal was properly and diligently prosecuted. If he engaged a counsel who was lacking in his sense of responsibility to the Court, it is he who should suffer and not the other side."

In the case of Rafiq Ahmad Khawaja v. Abdul Haleem (SCMR 1982 1229) the above view was re-affirmed by the august Supreme of Pakistan in the following words:-

"In the facts and circumstances of this case, we are not impressed with the contention that the appellant was under no obligation to pursue his case and that his case has gone by default entirely due to the negligence of his counsel."

And again:

"As pointed out earlier, the High Court on a thorough re- examination of the explanation furnished by the appellant in support of his non-appearance, has come to the conclusion that the appellant himself was negligent in not keeping in touch with his counsel.... "

6. In the case of Sher Muhammad v. Said Muhammad Shah (1981 SCMR 212) it was held as under:--

"it was undoubtedly the duty of the petitioner's counsel to inform him, if not of the date of hearing at least of the result, namely, the dismissal of

the revision petition, but the counsel failed to perform this duty, and the petitioner learned of the High Court's order only through a friend three months later. Even if these facts are accepted as correct, this would not constitute sufficient cause for the condonation of delay"

7. The question as to whether negligence of the counsel was not a sufficient cause for restoration of appeal nor for condonation of delay came up for hearing in Shah Wali v. Allah Bakhsh (1999 CLC 45) before the Lahore High Court, wherein it was held that negligence of the counsel is never considered to be sufficient cause for restoration of appeal nor for the condonation of delay in filing the petition for re admission. The obligation of the appellant to be vigilant for prosecution of the appeal after engaging a counsel does not absolve him from his duty to see that his appeal is properly and diligently prosecuted."

19. In the case of **AMANULLAH SOOMRO Vs. P.I.A. through Managing Director/Chairman and another**, reported in **2011 SCMR 1341**, Honourable Supreme Court held as under:

"7. Indeed Mr. Palejo also urged that litigants should not be penalized for negligence of counsel. While the argument at first sight might be attractive on a moral plain what is overlooked is whether any justification exists for depriving the opposite party of legal rights acquired owing to negligence of the petitioner or the counsel retained by him? Indeed, the right to recover the amount of wrongful loss caused on account of negligence is always available to a party. The record itself shows that the petitioner himself has made an application to a statutory body regulating the conduct of advocates. In any event we are clearly of the view that undue indulgence granted by courts would only multiply such problems."

20. In view of above legal position, aforesaid plea raised on behalf of the petitioner is devoid of force and untenable.

21. So far as the case of **Muhammad Nazeer** (supra) relied upon by learned counsel for the petitioner is concerned, same is distinguishable, thus not helpful to the petitioner. In the cited judgment, while discussing about the direction contained in tentative rent order, it was observed, **"It is manifestly clear that a direction thereunder can only be given to the tenant. Since at the very outset, the petitioner denied the existence of relationship of landlord and tenant, so it was incumbent for the Rent Controller to first frame preliminary issue to this effect in order to determine the existence of relationship of landlord and tenant between the petitioner and 'respondent' or otherwise."** It seems that in the cited case, the respondent had denied his status to be a 'tenant', whereas in instant case, the petitioner has clearly admitted her status to be that of a 'tenant'. She also does not claim that after

having been rented out the premises in question, she purchased the subject tenement. She continuously paid monthly rent in respect of the premises in question. In this view of the matter, she is under a legal obligation to pay the future rent and also the arrears of the rent. Although, she denied that respondents No.1 and 2 are the owners of the tenement in question, but on certain occasions, as detailed above, she has been admitting that respondents No.1 and 2 are the owners of the tenement in question. In the circumstances, she is bound to comply with the tentative rent order passed by the Rent Controller and the above case-law cited by petitioner's counsel is not helpful to her.

22. Even otherwise, it is not a hard and fast rule that in case a person was occupying a rented premises, and subsequently he denies his status to be that of a "tenant" during the rent proceedings, the Rent Controller is bound to first frame issue relating to relationship of landlord and tenant before passing a tentative rent order. In this connection, reference may be made to the case of **Mst. ZARINA KHAN Vs. FARZANA SHOAIB**, reported in **2017 SCMR 330**, wherein Honourable Supreme Court held as under:

"We may observe that it is not a rule of thumb that wherever a person inducted in the rented premises subsequently denies his/her status as tenant, the Rent Controller is bound to first frame point for determination/issue to this effect and decide it before passing a rent order to secure the interest of the landlord during the pendency of such proceedings. More so, as such rent order will be tentative in nature and subject to final adjudication. The Rent Controller was, thus, fully justified in passing the rent order in terms of section 17(8) and consequent order of striking off the defence under section 17(9) of the Cantonments Rent Restriction Act, 1963, due to its admitted non-compliance."

23. The upshot of above discussion is; that instant Constitutional Petition being not maintainable, is also meritless. Accordingly, it is dismissed and the impugned orders passed by the Rent Controller are maintained.

Karachi
Dated:24.08.2026.
Approved for reporting.

JUDGE
HEAD OF CONST. BENCHES