

IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No. S-1240 OF 2023
C.P.No. S-630 OF 2025

Date

Order with Signature of Judge

C.P.No.S-1240 OF 2023

Mrs. Uzma Fazal
versus
Farhat Ullah and another

C.P.No.S-630 OF 2025

Mrs. Uzma Fazal
versus
Farhat Ullah and another

Date of Hearing: 09-02-2026.

Date of Judgment: 23-02-2026.

Mr. Ansar Mukhtar, Advocate for the Petitioner.
Mr. Ahsan Imram Rizvi, Advocate for Respondent No.1.
Mr. Ali Safdar Depar, AAG.

ORDER

ZULFIQAR ALI SANGI, J: This Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (C.P.No.S-630 of 2025) has been instituted by the Petitioner, Mrs. Uzma Fazal, assailing the judgment dated 19.04.2025 passed by the learned XIIth Additional District Judge, Karachi South in First Rent Appeal No.319 of 2024, whereby the appeal preferred by the petitioner was dismissed and the order dated 13.11.2024 passed by the learned Rent Controller, Karachi South in Rent Case No.541 of 2017 was maintained. So far as C.P. No.S-1240 of 2023 (Mrs. Uzma Fazal versus Farhat Ullah and another) is concerned, learned counsel for the respondent has rightly pointed out that since the main applications have already been decided on merits, the said petition has become infructuous and is disposed of as such.

2. Briefly, the relevant facts in C.P.No.S-630 of 2025 are that the petitioner had filed Rent Case No.541 of 2017 under Section 14 of the Sindh Rented Premises Ordinance, 1979 ("the Ordinance") seeking

eviction of the respondent. After full-dressed trial, the said rent case was allowed vide judgment dated 22.02.2018. The respondent's appeal and subsequent constitutional petition were dismissed and possession of the demised premises was handed over to the petitioner. Subsequently, owing to default in payment of rent, the petitioner instituted Civil Suit No.685/2019 for recovery of outstanding rent, which too was decreed in her favour. The respondent's cross-claim and first appeal were dismissed, while a second appeal is stated to be pending.

3. During cross-examination in the aforesaid civil suit, a statement allegedly surfaced on the basis of which the respondent filed belated applications under Sections 15-A and 17 of the Ordinance in the already disposed of Rent Case No.541 of 2017. These applications were initially dismissed by the learned Rent Controller vide order dated 07.11.2022. In appeal, however, the matter was remanded vide order dated 23.08.2023, strictly on the question of limitation concerning the application under Section 15-A of the Ordinance. Thereafter, the learned Rent Controller, vide order dated 13.11.2024, allowed both applications under Sections 15-A and 17 and imposed penalty upon the petitioner. The said order was maintained in First Rent Appeal No.319 of 2024 vide judgment dated 19.04.2025, hence this petition.

4. Learned counsel for the petitioner contended that the courts below have acted in excess of jurisdiction, misread and non-read the material evidence, and ignored binding precedent reported as 2009 YLR 1648. It was argued that the remand order dated 23.08.2023 was confined only to the question of limitation under Section 15-A and did not authorize reconsideration or adjudication under Section 17 of the Ordinance. It was further submitted that the respondent had voluntarily vacated the premises and handed over possession without recourse to execution proceedings, and therefore, the penal provisions of Section 15-A of the Ordinance were not attracted.

5. Conversely, learned counsel for Respondent No.1 and the learned Assistant Advocate General supported the impugned orders and contended that the petitioner failed to occupy the premises after eviction and that the applications were within limitation, as knowledge of alleged non-occupation was acquired subsequently.

6. I have heard learned counsel for the parties at considerable length and have carefully examined the record.

7. The admitted position emerging from the record is that the eviction order dated 22.02.2018 attained finality after dismissal of appeal and constitutional petition filed by the respondent. It is also an admitted position that possession of the premises was handed over to the petitioner voluntarily and no execution proceedings were initiated for enforcement of the eviction order. The voluntary delivery of possession is a significant and undisputed fact which goes to the root of the matter.

8. Section 15-A of the Ordinance is a penal provision intended to curb mala fide evictions where a landlord secures eviction on the ground of personal requirement but fails to occupy the premises within the statutory period. Being penal in nature, the provision must be construed strictly. Before invoking such penal consequences, the Rent Controller must record clear findings regarding (i) mala fide intention at the time of seeking eviction, and (ii) failure to occupy within the statutory period without sufficient cause. For the ease of reference, Section 15-A is reproduced as under:-

15A. Where the landlord who has obtained the possession of a building under section 14 or premises under clause (vii) of section 15, re-lets the building or premises to any person other than the previous tenant or puts it to a use other than personal use within one year of such possession-

(1) he shall be punishable with fine which shall not exceed one year's rent of the building of the premises, as the case may be, payable immediately before the possession was so obtained.

(II) the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of the building or the premises, as the case may be, and the Controller shall make an order accordingly.

9. A plain and meaningful reading of Section 15-A makes it manifest that the provision is attracted only where a landlord, having obtained possession of a building under Section 14 or of premises under clause (vii) of Section 15, re-lets the said building or premises to a person other than the previous tenant, or puts the same to a use other than personal use within one year of obtaining such possession. In the present case, it is an admitted position that the premises in question were neither re-let to any third person nor utilized for any purpose other than that for which possession was sought; rather, the premises remained vacant. The record further discloses that although a favourable order was obtained by the petitioner and the same was maintained up to this Court, she neither instituted execution proceedings nor secured possession in pursuance of the said order. In order to ascertain the factual position, the record of C.P. No. S-2083 of 2018 was summoned. A perusal thereof reveals that on 18.10.2018, the petitioner (who is respondent in the present petitions) made a statement before the Court, inter alia, declaring that he had vacated the rented premises and had intimated the landlady through a letter dated 15.10.2018 to take vacant and peaceful possession. Copies of the said letter and courier receipts were annexed thereto.

10. Subsequent to the aforesaid statement, the said petition was not pressed and was disposed of in those terms vide order dated 18.10.2018. It is noteworthy that nowhere in the order is it recorded that possession was delivered to the petitioner in execution or compliance with the order passed by the Rent Controller. Even the letter dated 15.10.2018, addressed to Mrs. Uzma Fazal and Mr. Fazal Hussain Akbar, merely communicates that the tenant had vacated Flat No. 507-B, Sea Breeze Centre, Boat Basin, Block-5, Clifton, Karachi, and requested the landlords to intimate a convenient date and time for taking over vacant and peaceful possession. The contents of the said letter, upon scrutiny, do not indicate that possession was handed over pursuant to any coercive or judicial process; rather, they reflect a voluntary act of vacating the premises and offering possession to the landlords.

11. The cumulative effect of the material on record unequivocally demonstrates that possession was surrendered voluntarily and not through the execution of the eviction order or by adoption of any

coercive process. In such circumstances, the very foundation for invoking Section 15-A, namely, the alleged misuse of judicial process to secure eviction on a false or mala fide pretext stands considerably diluted. The courts below, however, failed to advert to and properly appreciate this material aspect of the matter and proceeded to record findings without adequately considering the legal consequences of voluntary surrender of possession.

12. It is well-settled that while this Court, in exercise of constitutional jurisdiction, does not ordinarily interfere with concurrent findings of fact, interference is warranted where the findings suffer from misreading, non-reading of evidence, or jurisdictional error. In the present case, the learned courts below have misapplied the scope of remand, overlooked material facts, and imposed penalty without recording requisite findings mandated under Section 15-A of the Ordinance.

13. For the foregoing reasons, I am of the considered view that the impugned judgment dated 19.04.2025 passed in First Rent Appeal No.319 of 2024 as well as the order dated 13.11.2024 passed by the learned Rent Controller, Karachi South in Rent Case No.541 of 2017 cannot be sustained in law. The same are hereby set aside.

14. Consequently, this Constitutional Petition (C.P.No.S-630 of 2025) is allowed in the above terms with no order as to the costs.

JUDGE