

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No.S-899 of 2023

(Abdul Naseer - v - Muhammad Rahim Shaikh & Ors.)

Date Order with signature(s) of Judge(s)

Hg: / Priority.

1. For orders on office objections.
2. For hearing of Misc. No.6457/23
3. For hearing of main case.

Date of Hearing and Order: 23.02.2026

Petitioner: Through M/s. Farmanullah Khan and Asim Iqbal,
Advocates

Respondents No 2 & 3 Mr. Muhammad Ramzan Tabassum, Advocate

ORDER

Nisar Ahmed Bhanbhro, J. This petition is directed against the orders dated 14.12.2022 passed by the Court of IVth Rent Controller (West) Karachi (**Trial Court**) in Execution Application No.07/2026 filed in Rent Case No.96 of 2013 (Re: Muhammad Rahim Shaikh v. Sher Wali & Ors.) and order dated 08.09.2023 passed by the Vth Additional District Judge (West) Karachi (**IIND Appellate Court**) in F.R.A. No.119 of 2022 (re: Abdul Naseer - v - Muhammad Rahim Shaikh & Ors.) whereby the application under Section 12(2) CPC filed by the petitioner was declined.

2. It is the case of the petitioner that Rent Case No. 96/2013, filed by Muhammad Rahim Shaikh seeking ejectment of Sher Wali and 2 others (**the alleged tenants**), was dismissed by the trial Court vide order dated 16.07.2015 on the ground that no relationship of tenancy existed between the parties. In F.R,A No. 13 of 2015, the Additional District Judge-I (West), Karachi, (**Ist appellate Court**) allowed the F.R. appeal and granted the ejectment application by directing the alleged tenants to hand over vacant possession of

the demised premises to Muhammad Rahim Shaikh within 30 days. Thereafter, Execution Application No. 07/2016 was filed, which was allowed vide order dated 14.05.2022, whereby a writ of possession was issued and the alleged tenants were directed to vacate the subject property. Upon issuance of the writ of possession, the petitioner, Abdul Naseer, approached the trial Court by filing an application under Section 12(2) CPC seeking recall/reversal of the orders dated 14.05.2022 and 06.10.2022 on the ground that the said orders were obtained through fraud and misrepresentation. Learned Trial Court vide its order dated 14.12.2022 dismissed the application of Petitioner holding that application was filed by non attorney, ingredients of Section 12(2) CPC were not attracted in the case, thus application was not maintainable. Petitioner filed F.R.A which was assigned to the IInd Appellate Court for disposal in accordance with law. IInd Appellate Court vide its order dated 08.09.2023 maintained the order of Trial Court and dismissed the appeal.

3. Learned counsel for the Petitioner contended that the respondent No 1 claims himself to be the landlord and owner of the property on the basis of an agreement of sale. In this regard, Respondent No 1 had filed Suit No. 1641 of 2016 (Muhammad Rahim Shaikh & Another v. Muhammad Karim & Ors.) for specific performance before the Court of Learned XI Senior Civil Judge (West), Karachi. The said suit was initially decreed; however, the findings were subsequently reversed and the suit was dismissed vide judgment and decree dated 02.08.2025. The respondent No 1 Muhammad Rahim Shaikh, has challenged the said judgment and decree dated 02.08.2025 before the competent forum. He further submitted that the respondent No 1's claim of ownership, on the basis of which the rent case was allowed and writ of possession was sought, has not been established before the competent forum. He further contended that the Petitioner was owner of the alleged demised premises which were owned by Katchi Abadi Department and were leased out to Sher Wali and Asif Sher Hassan. On maturity of lease the said Sher Wali and Asif Sher Hassan became the owners of the demised premises. Petitioner acquired the ownership rights by way of purchase through registered sale deed dated 22.09.2017. According to him, Respondent No 1's claim for specific performance was declined and until final adjudication of the matter, the petitioner remains the undisputed owner of the tenement premises and cannot be ejected from his personal property on the strength of an order passed against the alleged tenants, who, as per the record, were the original owners/leaseholders of the property. He, therefore, prayed that the petition may be allowed and the learned trial Court may be directed to re-assess the

material available on record and pass an appropriate order on the application under Section 12(2) CPC.

4. Learned counsel for the respondent No.1 contended that application under section 12(2) CPC was not maintainable and the courts below rightly rejected the same. Respondent No.1 was the landlord of the property in terms of Section 2 of SRPO, 1979 which says that a person collecting rent also falls within the definition of landlord. He further contended that the judgment and decree dated 02.08.2025 is under challenge before the competent forum and till final verdict the petitioner cannot be declared as owner of the property. It is further contended that application 12(2) CPC was filed by one Noor Khan who is son of alleged owner without having any power of attorney at the time of institution of the application. He contended that attorney was not in possession of any valid document authorizing him to file such application and First Rent Appeal was also preferred by the said attorney without any valid authorization and the present petition has been filed by said Abdul Naseer himself. He next contended that since the proceedings were filed by an unauthorized person as such the petition was even not maintainable. He prays for dismissal of the same.

5. Heard arguments and perused the material available on record.

6. When confronted with the question as to how an application under Section 12(2) CPC was maintainable against an order passed in execution proceedings particularly when the original judgment and decree had not been challenged, learned counsel for the petitioner failed to justify the filing of such an application in the execution proceedings. He, however, contended that the petitioner is the owner of the property by virtue of having purchased the same from Sher Wali and others, who were leaseholders of the demised premises as granted by the Katchi Abadi authorities. He further submitted that the said lease(s) have never been challenged before any competent forum and Petitioner was denied a right of fair trial by not impleading him as party to the proceedings, as such on this score alone all the proceedings stand vitiated. A perusal of the material available on record revealed that the ejectment application was allowed in the First Rent Appeal by the Ist Appellate Court. For this purpose, if the Petitioner was of the considered view that judgment was obtained by way of fraud, an application under Section 12(2) CPC could have been maintained before the said appellate forum. The courts below have rightly observed that the application was not maintainable in the execution

proceedings. Therefore, no exception can be taken to the findings rendered by the courts below to the extent of the maintainability of an application under Section 12(2) CPC challenging the order passed in execution of the original judgment or order. It is an axiomatic principle of law in civil proceedings that the Executing Court cannot go beyond the decree and cannot disturb the decree, the same principle applies to the Rent proceedings when execution of the order is sought under section 22 of SRPO, 1979.

7. From the perusal of contents of application under section 12(2) CPC, filed before the Trial Court, the intention of the Petitioner can be gathered that the same was filed to obstruct the possession to be handed over to the Respondent No 1 through orders dated 14.05.2022 and 06.10.2022. The petitioner challenged the writ of possession issued in respect of the alleged tenement premises pursuant to an order passed by the Ist Appellate Court. The petitioner was not a party to those proceedings. Petitioner intended to obstruct his dispossession, which can be done by invoking the provisions of Section 22 of SRPO which were in consonance with the Rules 97 to 101 of Order XXI of CPC. For the sake of convenience Section 22 of SRPO is reproduced below which reads as under:

22. Execution of orders. Final order passed under this Ordinance shall be executed by the Controller and all questions arising between parties and relating to the execution, discharge or satisfaction of the order shall be determined by the Controller and not by a separate suit.

Explanation: - In the execution proceedings relating to the order of ejectment, no payment, compromise or agreement shall be valid unless such payment, compromise or agreement is made before or with the permission of the authority passing the order."

8. From the above provision of law it is crystal clear that final order passed under the SRPO shall be executed by the Rent Controller and all questions arising between parties and relating to the execution, discharge or satisfaction of the order shall be determined by the Rent Controller and not by a separate suit. The Executing Court through impugned orders sought execution of the Final Order. An application under Section 12(2) CPC cannot be maintained against the order passed under the execution proceedings and the scope of the said application was limited only to the extent of seeking reversal of judgment and decree.

9. The legislation was live to the situations, wherein the lawful owner of the property was deprived of its right by not impleading him as party in the proceedings and an order for dispossession was made in execution of the judgment and decree. The lawful claimant therefore in such a situation could invoke the provisions of Rules 97 to 101 of Order XXI CPC and execution court on satisfaction may proceed to investigate of the claims of bonafide claimants. The purpose and intent of legislation behind incorporation of these provisions of law were to protect the rights of the lawful owners and further to enable the court to do complete justice. The above referred provisions of CPC were in aid and consonance with Section 22 SRPO and may be invoked by the Rent Controller, under such situations.

10. In the present case the courts below rightly held that an application under Section 12(2) CPC was not maintainable. However being a Court of law was expected to have knowledge of all the laws, in such circumstances, and being fully aware of the relevant legal provisions irrespective of whether the counsel for the petitioner or the petitioner himself invoked the same, an obligation and duty was cast upon the Court to do the complete justice and without being confused of the invoking of the jurisdiction under some wrong provisions ought to have rectified the mistake being a Civil Court. It was, therefore, a fit case for the Rent Controller to exercise its inherent jurisdiction under Section 151 CPC by converting the application under Section 12(2) CPC into an application under Section 22 of SRPO read with Order XXI Rules 97 - 101 CPC.

11. It is an admitted position on record that the petitioner holds a valid title to the tenement premises. The Respondent No 1 was litigating to get the title and possession of the property through a suit seeking specific performance, even in those proceedings, the respondent, Muhammad Rahim Shaikh, neither impleaded the petitioner as a party nor sought cancellation of title document result of registered sale deed, despite having knowledge of the same since 2022. This clearly brings the petitioner's title within the ambit of a valid document. The Petitioner may obstruct his dispossession but the same would be regulated by Executing Court in terms of Rule 101 of Order XXI CPC.

12. As far as the contention of the learned counsel for the respondent that 12(2) CPC application was filed by an incompetent person, needless to say that

the said Noor Khan was son of Abdul Naseer and throughout the proceedings the said Abdul Naseer never stated that he did not authorize his son to file such proceedings on his behalf, it was Abdul Naseer to object upon the attorney and by instituting this petition he has validated the acts done by his attorney before the Courts below. Respondent No 1 therefore cannot take benefit of such mistake if committed by the petitioner while instituting the application Section 12(2) CPC.

13. For the reasons stated above, this petition is allowed. The order dated 14.12.2022 passed by the Court of IVth Rent Controller (West) Karachi (**Trial Court**) in Execution Application No.07/2026 is hereby set aside. The application filed by the petitioner under Section 12(2) of the CPC shall be deemed to be pending and the same shall be treated as an application under Section 22 SRPO, 1979 read with Order XXI Rules 97 - 101 of the CPC and shall be decided strictly in accordance with law after affording both parties a proper opportunity of trial. The learned trial court may frame the issues allow the parties to lead evidence, if necessitated and will adjudicate the claim of Petitioner. The orders dated 14.05.2022 and 06.10.2022 shall remain suspended until the final decision of the said application. Since this is an old matter, the learned trial Court is directed to decide the same within three (03) months time from the date of receipt of this order.

14. Office to send copy of this order to Trial Court for compliance, where the parties shall appear on 09.03.2026 and no court motion notice shall be issued by the Trial Court in that regard.

JUDGE

Approved for reporting