

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
CP No.S-445 of 2025
Asad Haroon Versus Kamran Kifayat & others
CP No.S-446 of 2025
Sadia Haroon Versus Kamran Kifayat & others

Date	Order with signature(s) of Judge(s)
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- 1. For orders on office objection No. 1 to 8 a/w reply as at Flag A
- 2. For hearing of CMA No.3829/2025
- 3. For hearing of main case

17.11.2025

Molvi Iqbal Haider, advocate for the petitioner
Mr. Abdul Ghaffar, advocate for the respondents

Nisar Ahmed Bhanbhro, J. I propose to decide the fate of the captioned petition through this common order, as the common question of law and facts is involved in both the Petitions.

2. Through these petitions, the petitioners have challenged the order dated 10.03.2025 passed by learned VIIIth Rent Controller at Karachi (Central) (*Trial Court*) in Rent Cases No.287 & 289 / 2023 (re-Kamran Kiffayat & another v. Asad Haroon), whereby the petitioners’ side for recording evidence was closed, and an application under Section 151 CPC for recalling the said order and reopening the side of opponents for evidence was dismissed.

2. Heard arguments, perused record. The Petitioners in the instant Petitions are facing trial in separate rent proceedings filed by Respondent Kamran Kifayat. The Respondents’ evidence was concluded and it transpired from the record that several opportunities were granted to the petitioners to appear before Trial Court to record evidence but they failed, therefore, learned Trial Court closed the side of Petitioners for evidence vide order dated 10.03.2025. The operative part of the order is reproduced below:

“2. A review of the record reveals that the opponent's counsel filed an affidavit in evidence of the opponent's attorney on September 19, 2024. The applicant’s side received a copy of the affidavit, and the matter was fixed for the opponent's evidence. However, it is notable that the matter has been continuously adjourned due to the opponent's delaying tactics on multiple

occasions i.e. 30.09.2024, 09.10.2024, 26.10.2024, 12.11.2024, 30.11.2024, 08.01.2025, 25.01.2025, 06.02.2025, 22.02.2025 and today i.e. 10.03.2025. Record further reveals that on January 25, 2025, the counsel for the opponent moved an adjournment application, citing the opponent's poor health. Notably, this application was allowed with a clear caveat it was the last and final chance for the opponent to seek an adjournment."

3. Petitioners filed an application under Section 151 CPC for opening the side on the ground that the Petitioners were abroad and their attorney was suffering from a serious ailment, therefore unable to attend the Court and proceed with the matter. Learned trial Court while deciding the application under Section 151 CPC did not consider this important aspect of the case and dismissed the application on the ground that sufficient opportunities were granted to the petitioners and the case cannot be adjourned for indefinite hearings, hence declined the application vide order dated 10.05.2025.

4. No doubt, the parties in the proceedings are required to cooperate with the Court for early disposal of the case but Court should also take into consideration the compelling circumstances that prevented the parties from appearing in the court to record evidence. Perusal of record revealed that sufficient material was available in the instant case to demonstrate that the non-appearance of the parties before the Court for recording of evidence was beyond their control. The petitioners appeared and demonstrated willingness to record evidence, the learned trial Court, therefore, should have granted an opportunity of recording evidence to reach at fair and just conclusion of the case. The right to a fair trial was recognized as fundamental right of the individual as enshrined under Article 10-A of the Constitution. To ensure the disposal of matter on merits and to comply with the dictates of fair trial, it was necessary to record the evidence of the parties in order to sift grain from the chaff, denial thereof would tantamount to violation of such constitutional guarantee.

5. If the party in a proceeding before Court was abroad and his / her attorney was not in a position to record evidence, the better option available with the Court was to record the evidence of said party through electronic mode by means of video meetings, but not to close the side for evidence.

6. In the wake of above discussion, this court has reached to an irresistible conclusion that the orders dated 10.03.2025 and 10.05.2025 were

perverse, infirm and suffered from material illegality, calling for indulgence of this Court under its writ jurisdiction. Consequently; both the petitions are allowed and order dated 10.03.2025 and 10.05.2025 are hereby set aside. The side of the petitioners for recording of evidence is opened. The petitioners shall appear before the learned trial Court on the next date of hearing. In case the petitioners again fail to appear before the learned trial Court for recording of the evidence, the learned trial Court shall be at liberty to proceed further and decide the fate of the rent cases in accordance with the law. The learned trial Court shall conclude evidence within a period of 20 days of the date of this order and will decide Rent Cases No.278 & 289 of 2023 within a period of two (02) months.

Both the petitions stand *disposed of* in the above terms along with pending application(s)

JUDGE

Nadir*