

**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT HYDERABAD**

C.P No. S-198 of 2025

[Mr. Muhammad Jamal v. Learned 5th ADJ Hyderabad & others]

Petitioner : Mr. Muhammad Jamal through
Mr.Muhammad Zakaria Baloch,
Advocate.

Respondents No.1&2 : Through Mr. Muhammad Ismail
Bhutto, Additional Advocate General
Sindh.

Respondent No.3 : Mst. Zubaidah through Mr. Aqeel
Ahmed Siddiqui, Advocate.

Date of Hearing : **06.03.2026**

Date of Judgment : **06.03.2026**

JUDGMENT

RIAZAT ALI SAHAR. J. - The instant Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 has been filed by the petitioner assailing the consolidated judgment dated 06.05.2025 passed by the learned 5th Additional District Judge, Hyderabad in First Rent Appeals No.128 of 2024 and 21 of 2025, whereby the appeals preferred by the petitioner were dismissed and the orders passed by the learned Rent Controller were maintained. The petitioner has also challenged the orders dated 06.11.2024 and 15.04.2025 passed in Rent Application No.159 of 2022 and Rent Execution Application No.17 of 2025 respectively. The petitioner is seeking for the following reliefs:-

(A). That, the Petitioner/Opponent respectfully prayed that this Hon'ble Court may graciously be pleased to call for the record and proceedings of the First Rent Appeals No. 128 of 2024 & 21 of 2025 (RE: Muhammad Jamal Vs Mst. Zubaidah) arisen from Rent Case No. 159 of 2022 & Rent Execution Application No: 17 of 2025 (Re: Mst. Zubaidah V/s Muhammad Jamal), respectively, from the Courts of the Respondent No. 1 & 2, after perusal of the same, may graciously be pleased to allow the instant Constitution Petition & set-aside the Impugned

Consolidated Judgment Dated. 06.05.2025 & Orders Dated. 06.11.2024 & 15.04.2025 passed by the Respondent No. 1 & 2 and may graciously be Dismissed the Rent Case being not maintainable under the law as well as having no cause of action have been specifically mentioned in the Rent Case No. 159/2022.

(B). That, any other relief which this Hon'ble Court may be pleased to deem fit, proper and appropriate be awarded to the Appellant.

2. The background of the case is that respondent No.3 (Mst.Zubaidah) instituted a Rent Case No.159 of 2022 before the learned Rent Controller against the petitioner in respect of a shop along with its upper portion situated at C.S. No.2164, Goods Naka, Hyderabad. It is further stated that the property had been purchased by her deceased husband Muhammad Jameel and after his demise the premises were rented out to the petitioner through rent agreement dated 11.12.2011. According to the respondent, the petitioner defaulted in payment of rent and the premises were also required for personal bona fide use of her family, particularly for the business of her son. Upon issuance of notice, the petitioner appeared before the learned Rent Controller and filed written statement denying the relationship of landlord and tenant and claiming himself to be a co-sharer in the property on the basis of inheritance from his deceased father Abdul Shakoor. During the course of proceedings, the respondent examined herself and produced supporting witnesses including Faheem, Majid Khan and Ahmed Raza in support of the tenancy agreement and the claim of default. Certain documentary evidence including rent agreements and utility bills was also produced.

3. During pendency of the proceedings, the respondent moved an application under Section 16 (1) of the Sindh Rented Premises Ordinance, 1979 (“**Ordinance**”) seeking determination of tentative rent. The learned Rent Controller, after hearing the parties, vide order dated 20.03.2024 directed the petitioner to deposit rent at the rate of Rs.6,000/- per month. The petitioner admittedly failed to comply with the said order. Consequently, the respondent filed an application under Section 16 (2) of the Ordinance seeking striking off the defense of the petitioner. The learned Rent Controller, after considering the material available on record, vide order dated 06.11.2024 allowed the application

under Section 16 (2) of the Ordinance, struck off the defense of the petitioner due to non-compliance of the tentative rent order and directed him to vacate the demised premises within thirty days. The petitioner challenged the said orders through First Rent Appeal No.128 of 2024 before the learned Appellate Court. Meanwhile, the respondent also initiated Rent Execution Application No.17 of 2025 for enforcement of the eviction order. The Executing Court, after service of notice and non-appearance of the petitioner, allowed the execution application vide order dated 15.04.2025 and issued writ of possession. The said order was also challenged through First Rent Appeal No.21 of 2025. Both the appeals were heard together by the learned Appellate Court and through consolidated judgment dated 06.05.2025 dismissed the appeals holding that the petitioner had failed to comply with the order passed under Section 16 (1) of the Ordinance and the learned Rent Controller had rightly struck off his defense under Section 16 (2). Hence, this petition.

4. Learned counsel for the petitioner contended that the learned Rent Controller exceeded his jurisdiction while deciding the application under Section 16 (1) of the Ordinance by entering into deeper appreciation of evidence instead of conducting a summary inquiry. He further contended that the relationship of landlord and tenant between the parties was seriously disputed and the learned trial Court failed to decide the said question as a preliminary issue. He contended that the alleged tenancy agreement was neither properly pleaded nor produced with the rent application and was brought on record only during evidence; therefore, it lacked legal sanctity. According to the learned counsel, once the order under Section 16 (1) was illegal, the subsequent proceedings under Section 16 (2) and the execution proceedings were also liable to be declared void. He lastly contended that the description of the property mentioned in the execution proceedings were inconsistent with the description mentioned in the rent application and that the appellate Court failed to appreciate these material irregularities.

5. Conversely, learned counsel for respondent No.3 contended that the petitioner was a tenant in the demised premises and had admittedly failed to comply with the tentative rent order passed under Section 16 (1) of the Ordinance. He contended that non-compliance of such order entails mandatory consequences under Section 16 (2)

whereby the defense of the tenant is liable to be struck off. He further contended that the petitioner had taken contradictory pleas regarding ownership without producing any title documents and had deliberately prolonged the proceedings. According to him, the learned Rent Controller as well as the learned Appellate Court had correctly appreciated the material on record and no jurisdictional defect exists in the impugned orders.

6. Learned Additional Advocate General supported the impugned orders and submitted that both the Courts below have acted strictly in accordance with the provisions of the Sindh Rented Premises Ordinance, 1979 and no case for interference in constitutional jurisdiction is made out.

7. I have heard the learned counsel for the parties at considerable length and have carefully examined the material available on record as well as the impugned orders passed by the Courts below.

8. At the very outset, it is necessary to reiterate the well-settled scope of constitutional jurisdiction of this Court under Article 199 of the Constitution. This Court does not sit as a Court of appeal over the findings recorded by the forums constituted under special statutes. The supervisory jurisdiction of this Court is confined to examining whether the impugned orders suffer from jurisdictional defect, patent illegality, violation of mandatory provisions of law or misreading and non-reading of material evidence. Reappraisal of evidence or substitution of concurrent findings of fact recorded by the Courts below is ordinarily not permissible unless the same are shown to be perverse or arbitrary.

9. In the present case, the record reflects that the respondent filed Rent Application No.159 of 2022 on the grounds of default in payment of rent and personal *bona fide* requirement. During pendency of the proceedings, an application under Section 16 (1) of the Sindh Rented Premises Ordinance, 1979 was moved which was decided by the learned Rent Controller vide order dated 20.03.2024 whereby the petitioner was directed to deposit rent at the rate of Rs.6,000/- per month. It is an admitted position that the petitioner did not comply with the said order. The consequence of such non-compliance is clearly provided under Section 16 (2) of the Ordinance which mandates that in case of failure of the tenant to deposit tentative rent, the Rent

Controller shall strike off the defense of the tenant. The use of the expression “shall” in the said provision leaves no discretion with the Rent Controller once default is established. The learned Rent Controller, therefore, after observing that the petitioner had failed to comply with the tentative rent order, rightly allowed the application under Section 16 (2) of the Ordinance and struck off the defense of the petitioner. The appellate Court, while examining the legality of the said order, also recorded concurrent findings that the petitioner had neither deposited the rent nor produced any cogent justification for non-compliance of the order dated 20.03.2024. It is also significant to note that the petitioner had earlier challenged the order dated 20.03.2024 before this Court through Constitutional Petition No.S-143 of 2024 which was dismissed being infructuous. Once the said order attained finality, the petitioner was under legal obligation to comply with the same. His refusal to deposit rent merely on the basis of a claim of ownership cannot justify disobedience of the order of a competent Court.

10. The plea raised by the petitioner that he is a co-sharer in the property is also devoid of substance. It is settled law that the Rent Controller is not competent to determine complicated questions of title. Even otherwise, a tenant who disputes the title of the landlord is required first to surrender possession of the premises and thereafter seek adjudication of his proprietary rights before the competent forum. The petitioner has neither produced any title document nor initiated any substantive proceedings to establish his claim of ownership. In this context, the Order dated 29.01.2026 passed by the Honourable Supreme Court of Pakistan in the case of Nawab Khan and another v. Muhammad Yousaf and others [C.P.L.A. No.806-P/2018 & CMA No.1877-P of 2018] authoritatively settles the controversy. In paragraph-7 thereof, the Honourable Supreme Court summarized the legal position in clear terms that:

- (i) A tenant who subsequently asserts acquisition of ownership rights is bound by estoppel under Article 115 of the Qanun-e-Shahadat Order, 1984, and cannot deny the landlord’s title while continuing in possession as tenant. If he intends to contest proprietary title, he must first surrender possession and thereafter seek adjudication of his claim.
- (ii) An ejectment petition against such tenant remains maintainable, since the mere assertion or alleged acquisition of ownership rights does not terminate the

tenancy nor does it oust the jurisdiction of the Rent Controller.

- (iii) Where the tenant claims to have purchased a share or acquired co-ownership, the proper remedy is not to resist ejectment proceedings but to seek recourse through a civil suit for partition.

11. Another important aspect of the matter is that during the course of hearing before this Court, respondent No.3 appeared and submitted that possession of the subject premises had already been delivered to her. On Court query, the learned counsel for the petitioner Mr. Muhammad Zakria Baloch rashly and in a very unprofessional manner disputed the said statement, therefore, this Court called for a report from the learned trial Court. The report furnished by the learned trial Court through bailiff clearly confirms that the possession of the demised premises has already been handed over to respondent No.3 in execution of the eviction order. In view of the above factual position, even otherwise the present petition has largely become infructuous as the impugned order has already been executed and the possession of the premises stands delivered to the respondent in accordance with law.

12. As far as the objections raised by the learned counsel for the petitioner alleging discrepancies in the description of the property or the date of agreement are concerned, the same are purely technical in nature and do not affect the legality of the impugned orders. It is settled principle of law that procedural technicalities should not be allowed to defeat the ends of justice, particularly when the tenant has failed to comply with a mandatory order passed under Section 16 (1) of the Ordinance.

13. For what has been discussed above and after examining the entire record, I am satisfied that the learned Rent Controller and the learned Appellate Court have concurrently held that the petitioner committed default in complying with the tentative rent order and that his defense was rightly struck off under Section 16 (2) of the Ordinance. No jurisdictional defect, illegality or perversity has been pointed out which may warrant interference by this Court in exercise of its constitutional jurisdiction. Consequently, the instant Constitutional Petition being devoid of merits is hereby **dismissed**. The impugned consolidated judgment dated 06.05.2025 as well as the orders dated

06.11.2024 and 15.04.2025 passed by the learned Courts below are **maintained**.

14. Before parting with this judgment, it is also observed that during the course of hearing the conduct of learned counsel for the petitioner was found to be painful, unprofessional and aggressive, which is not in consonance with the standards expected from members of the legal fraternity under the Legal Practitioners and Bar Councils Act, 1973. Learned counsel is, therefore, expected to maintain professional decorum in future proceedings before this Court.

15. Let the R&Ps of the Courts below be returned forthwith.

JUDGE

Abdullah Channa/PS