

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

C.P No. S-466 of 2025

[Syed Aftab Hussan & another v. Abdul Aziz & others]

Petitioners : Syed Aftab Hussain and another through Mr. G. Ali @ Ali Jan Qureshi, Advocate.

Respondent No.1 : Abdul Aziz through Miss. Musarrat Shaheen, Advocate.

Respondents No.2&3 : Through Mr. Muhammad Yousuf Rahpoto, Assistant Advocate General, Sindh.

Date of Hearing : **02.03.2026**

Date of Judgment : **02.03.2026**

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 petitioners have challenged the judgment dated 21.08.2025 and decree dated 26.08.2025 passed by the learned Model Civil Appellate Court/IXth Additional District Judge, Hyderabad in First Rent Appeal No.108 of 2024 whereby the appeal preferred by the petitioners was dismissed and the judgment dated 02.09.2024 passed by the learned Rent Controller-VIII, Hyderabad in Rent Case No.64 of 2023 was maintained. The petitioners are seeking for the following reliefs:-

- a) *That this Honourable Court may be pleased to set aside the impugned judgment dated 21-08-2025 and decree dated 26-08-2025 in First Rent Appeal No. 108/2024 (Re- Syed Aftab Hussain (Late) and another V/s Abdul Aziz and another) passed by the learned Model Civil Appellate Court/9th Additional District Judge Hyderabad and remand back the case to the trial court with direction to decide matter after conducting evidence of the respective parties.*
- b) *That this Honourable Court may be please to grant stay in execution application No.86/2024 pending before he learned 8th Senior Civil Judge Hyderabad till the final decision of the instant petition.*

c) Any other equitable relief may be awarded to petitioner as deem fit.

2. The background of the case is that the respondent No.1 filed a Rent Application under Section 15 of the Sindh Rented Premises Ordinance, 1979 before the learned Rent Controller stating that Flat No.5 situated on the second floor of Raja Bazar Plaza, Unit No.12, Latifabad, Hyderabad was let out to the opponents at a monthly rent of Rs.7,000/- through a tenancy agreement executed on 08.10.2016. He further stated that after expiry of the written tenancy agreement, the tenancy continued through an oral agreement on the same terms and conditions. According to the respondent No.1/applicant, the petitioners/opponents defaulted in payment of rent for about sixteen months and also failed to vacate the premises despite repeated requests and legal notice dated 31.03.2023. The respondent No.1/applicant further stated that the premises were required for his personal *bona fide* use. Consequently, the rent application was filed seeking eviction of the petitioners/opponents and recovery of arrears of rent.

3. The record reflects that notices were duly issued to the opponents through ordinary as well as substituted modes of service including publication in a daily newspaper. The opponents appeared through counsel but despite repeated opportunities failed to file written statement/objections. Consequently, vide order dated 28.03.2024 they were debarred from filing objections and the case proceeded ex-parte. The applicant thereafter produced his evidence through affidavit and supporting documents. After examining the material available on record, the learned Rent Controller vide judgment dated 02.09.2024 allowed the rent application and directed the opponents to vacate the demised premises within ninety days. Against the said judgment, the petitioners preferred First Rent Appeal No.108 of 2024 before the learned Appellate Court, which was dismissed through judgment dated 21.08.2025. Hence, the present constitutional petition.

4. Learned counsel for the petitioners contended that the impugned judgments passed by the Courts below are contrary to law and facts. He contended that no relationship of landlord and tenant existed between the parties as the respondent had failed to produce any

title document or utility bill in his name. He further contended that the petitioners were in possession of the premises as *bona fide* purchasers through a sale agreement and that the ex-parte proceedings occurred due to negligence and misconduct of the previous counsel who failed to file objections on their behalf. He, therefore, prayed that the impugned judgments be set aside and the matter be remanded to the trial court for decision after recording evidence of the parties.

5. Conversely, learned counsel for respondent No.1 supported the impugned judgments and contended that the respondent had established his case through documentary as well as oral evidence. She contended that despite repeated opportunities the petitioners failed to file written statement or contest the proceedings before the Rent Controller and their conduct clearly showed their intention to delay the matter. She further contended that the findings recorded by the Courts below are based on proper appreciation of evidence and do not suffer from any illegality warranting interference by this Court in constitutional jurisdiction.

6. Learned Assistant Advocate General Sindh also supported the impugned judgments and submitted that both the Courts below have acted strictly in accordance with the provisions of law. According to him, no jurisdictional defect or illegality has been pointed out in the concurrent findings recorded by the Courts below; therefore the present petition is liable to be dismissed.

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 judgments passed by the Courts below.

8. At the outset, it is pertinent to mention here that the scope of constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is limited in nature. This Court does not sit as a Court of appeal over the findings recorded by the forums constituted under special statutes. Interference can only be made where the impugned orders suffer from jurisdictional defect, patent illegality, or are based on misreading or non-reading of material evidence. Unless such infirmities are demonstrated, the

concurrent findings recorded by the Courts below ordinarily do not call for interference.

9. In the present case, the record reflects that the respondent No.1 instituted a rent application under Section 15 of the Sindh Rented Premises Ordinance, 1979 seeking eviction of the petitioners from the demised premises on the grounds of default in payment of rent and personal *bona fide* requirement. The proceedings before the learned Rent Controller show that notices were issued to the petitioners through ordinary as well as substituted modes of service including publication in a newspaper. The petitioners eventually appeared through counsel and sought time for filing written statement/objections. However, despite repeated opportunities granted by the learned Rent Controller on several dates, the petitioners failed to file their written statement. Consequently, they were debarred from filing objections vide order dated 28.03.2024 and the matter was rightly ordered to proceed ex-parte. It is significant to note that even after the proceedings were ordered to continue ex-parte, the petitioners did not take any effective steps to contest the matter or to place their defence on record. The respondent thereafter produced his evidence through affidavit in ex-parte proof along with relevant documents including the tenancy agreement and other supporting material. The said evidence remained completely un-challenged and un-rebutted. It is a settled proposition of law that when the statement of a witness in examination-in-chief is not subjected to cross-examination, the same is deemed to have been admitted. In such circumstances, the learned Rent Controller had no reason to disbelieve the version of the applicant which stood supported by documentary evidence and remained uncontroverted.

10. The contention raised on behalf of the petitioners that no relationship of landlord and tenant existed between the parties also appears to be devoid of substance. The record shows that the respondent had produced material indicating that the premises were let out to the petitioners through a tenancy arrangement and that rent was being paid for the said premises. Even otherwise, the petitioners failed to produce any documentary evidence before the trial Court or the appellate Court in support of their plea that the premises had been purchased by them from one Munawar Hussain through sale agreement or that they were occupying the premises in any capacity other than

that of tenants. Mere assertion without supporting evidence cannot be accepted to displace the findings recorded by the Courts below.

11. Another important aspect of the matter is that both the learned Rent Controller and the learned Appellate Court have recorded concurrent findings of fact after examining the material available on record. The learned Appellate Court has also considered the arguments advanced by the petitioners and found that they had deliberately avoided filing written statement and failed to produce any proof in support of their defence. The petitioners have not been able to point out any misreading or non-reading of evidence or any violation of mandatory provisions of law committed by the Courts below. In absence of such infirmity, this Court would be slow in disturbing the concurrent findings recorded by the competent forums.

12. The plea taken by the petitioners that they were unable to contest the matter due to negligence of their previous counsel also does not advance their case. It is settled law that a litigant cannot be permitted to reopen concluded proceedings merely by attributing negligence to his counsel, particularly where the record clearly demonstrates that sufficient opportunities were afforded by the Court to defend the case. The petitioners, having failed to avail those opportunities, cannot now seek indulgence of this Court to undo the consequences of their own inaction. As far as plea of the petitioners with regard to purchase of subject premises is concerned, even if it is presumed to be true, then 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 such 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 ejection proceedings but to seek recourse through a civil suit for partition.

13. From the overall circumstances of the case, it is evident that the respondent succeeded in establishing his claim before the learned Rent Controller and the petitioners failed to rebut the same despite repeated opportunities. The learned Appellate Court has rightly affirmed the findings recorded by the trial Court. The impugned judgments therefore do not suffer from any jurisdictional defect, illegality, or perversity which may warrant interference by this Court in exercise of its constitutional jurisdiction.

14. For what has been discussed above, I am of the considered view that the present Constitutional Petition is devoid of merits and the impugned judgment dated 21.08.2025 and decree dated 26.08.2025 passed by the learned Model Civil Appellate Court/IXth Additional District Judge Hyderabad do not call for interference. Consequently, the petition is **dismissed**. However, the petitioners are directed to hand over vacant and peaceful possession of the subject premises to respondent No.1 within one month, failing which the SSP Hyderabad shall extend full assistance for ensuring delivery of possession in accordance with law. These are the reasons for the short order dated 02.03.2026.

JUDGE