

IN THE HIGH COURT OF SINDH, KARACHI

C. P. NO. D-3512 / 2026
(Sohail Mansoor Japanwala Vs. Federation of Pakistan & Others)

Present:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Jaffer Raza

Date of hearing and order:- 28.08.2026.

Mr. Aftab Ahmed Khuharo, Advocate for Petitioner.
Mr. Muhammad Akbar Khan, Assistant Attorney General.
Mr. Rashid Khan Mahar, Advocate for Respondent.

Adnan-ul-Karim Memon, J. Petitioner Sohail Mansoor Japanwala has filed this Petition under Article 199 of the Constitution of Islamic Republic of Pakistan seeking the following reliefs: -

- “i) Set aside the impugned order dated 14.04.2026 passed by the learned Gas Utility Court, Karachi in Civil Suit No.78/2024;
- ii) Recall/set aside the order dated 27.01.2026 whereby the Appellant/Petitioner was debarred from filing leave to defend/written statement;
- iii) Permit the Appellant/Petitioner to file leave to defend/written statement before the learned trial Court;
- iv) Suspend further proceedings before the learned Gas Utility Court during pendency of the instant proceedings;”

2. The petitioner, has filed the instant Constitutional Petition under Article 199 of the Constitution, challenging the order dated 14.04.2026 passed by the learned Gas Utility Court, Karachi in Civil Suit No.78/2024, whereby his application for recalling the order dated 27.01.2026 was dismissed and he was deprived of the opportunity to file leave to defend/written statement.

3. It is the case of the parties that Respondent No.1, Sui Southern Gas Company Limited (SSGC), had instituted the said suit under the Gas Theft Control & Recovery Act, 2016, seeking recovery of Rs.36,97,200/- on account of alleged direct gas consumption and gas theft at a bakery premises. The claim was based upon inspection reports, load surveys, departmental assessments and an earlier FIA case. The petitioner was impleaded as Defendant No.3 on the allegation that he was the owner of the premises; however, according to him, no title document, gas agreement, consumer record or other legally admissible material was produced to establish his ownership, contractual relationship or liability.

4. The petitioner's counsel further contends that the allegations arise from highly disputed questions of fact and law requiring proper evidence and trial. He also relies upon his acquittal in the earlier criminal proceedings arising from the same allegations, wherein material contradictions and deficiencies in the prosecution case were noted. He added that the petitioner came to know of the civil suit through newspaper publication and appeared through counsel on 06.01.2026. However, vide order dated 27.01.2026, he was debarred from filing leave to defend on account of delay. He subsequently moved an application for recall, explaining that due to unavoidable personal circumstances and his absence from Karachi, necessary instructions and documents could not be supplied to his counsel within time. The learned Gas Utility Court, however, dismissed the application on 14.04.2026. The petitioner assails the impugned order as arbitrary, mechanical and overly technical, contending that denial of an opportunity to defend, particularly where substantial financial liability and disputed questions are involved, amounts to denial of fair trial and due process under Article 10-A of the Constitution. He therefore seeks setting aside of the impugned orders and permission to file leave to defend/written statement and contest the suit on merits.

5. The learned counsel for the respondent raised the question of maintainability of petition and rebutted the petitioner's contention in terms of the orders dated 27.01.2026 and 14.04.2026, and appellate procedure available in law, which the petitioner failed to invoke in time, however we reminded him that the impugned orders are interlocutory in form, and have direct effect of completely shutting out the petitioner from defending the suit and exposing him to a substantial financial liability without adjudication on merits. He submits that leave to defend the case has been declined, therefore, this Court has no jurisdiction to deal with the issue.

6. We have heard the learned counsel for the parties and perused the record with their assistance.

7. The petitioner has challenged the order dated 14.04.2026, whereby the Gas Utility Court declined to recall its earlier order dated 27.01.2026 debarring him from filing leave to defend. Both orders are interlocutory in nature and do not finally dispose of the suit against the petitioner. Section 13(6) of the Gas (Theft Control and Recovery) Act, 2016 expressly bars an appeal, review or revision against an order allowing or rejecting an application for leave to defend or against an interlocutory order which does not finally dispose of the proceedings. The legislature has thus consciously prescribed a special and restricted statutory scheme governing proceedings before the Gas Utility Court and the remedy available against its orders.

8. Although the constitutional jurisdiction is extraordinary, it is not ordinarily to be exercised where the legislature has provided a specific statutory framework and the impugned order falls within an express exclusion from appellate/revisional scrutiny.

9. The controversy raised by the petitioner essentially concerns the condonation of delay and his purported justification for not filing leave to defend within the statutory period of 21 days under Section 7 of the Act. The trial Court considered his explanation, found it vague and unsupported by any particulars or documentary material, and further observed that he had been duly served on 06.01.2026, had engaged counsel on the same day, and nevertheless failed to file leave to defend when the matter was taken up on 27.01.2026. Such findings involve discretion by the competent Gas Utility Court and though do not, in the circumstances of the case, demonstrate any jurisdictional defect or patent illegality, however the trial ought to have considered the request of the petitioner for decision of the case on merits.

10. We are of the view that the right to defend a claim is subject to the conditions and limitations validly imposed by law. Where a party, despite knowledge of the proceedings and representation through counsel, fails to comply with the prescribed period and subsequently fails to establish sufficient cause for such default, the consequential order cannot ordinarily be characterized as denial of due process merely because it operates adversely against him. Likewise, the petitioner's acquittal in separate criminal proceedings does not, at this interlocutory stage, furnish a ground to bypass the statutory scheme, particularly when the civil proceedings involve recovery proceedings under a special enactment and the issues arising therein are to be determined in accordance with that enactment.

11. Moreover, Section 13 itself demonstrates that the legislature has carefully delineated the circumstances in which an aggrieved person may approach the High Court, however, the appeal is available against a judgment, decree, sentence or final order, including an ex parte decree, but an appeal is expressly excluded against an order relating to leave to defend or an interlocutory order not finally disposing of the proceedings.

12. Before parting with the order, we deem it appropriate to observe that, notwithstanding the statutory limitation governing the filing of an application for leave to defend, the learned trial Court may examine the application, if already placed on record, strictly in accordance with Section 7 of the Gas (Theft Control and Recovery) Act, 2016, and, if upon such examination it finds that the petitioner has raised substantial questions of law or fact requiring determination through

evidence, may consider affording him an opportunity of hearing and passing an appropriate order in accordance with law. As section 7(8) expressly casts upon the Gas Utility Court the duty to grant leave where substantial questions of law or fact are raised in respect of which evidence needs to be recorded, while sub-section (6) also contemplates consideration of sufficient cause in relation to non-compliance with the prescribed requirements. Thus, without diluting the mandatory statutory period or conferring upon the petitioner any vested right to leave to defend, the trial Court, being the forum competent under the special enactment, may ensure that a potentially meritorious defence involving disputed facts is not shut out without due consideration, particularly where the determination of liability depends upon evidence, therefore, the petitioner must be provided an opportunity to lead the evidence.

13. Since the impugned order neither constitutes a final judgment, decree, sentence or final order, therefore, the petition is, disposed of, leaving the parties to pursue the proceedings before the learned Gas Utility Court in accordance with law and the observation recorded in the preceding paragraph.

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