

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

*Mr. Justice Muhammad Saleem Jessar;
Mr. Justice Abdul Hamid Bhurgri.*

C.P No.D-6397 of 2026

[Ghulam Hussain v. Muhammad Hashim and others]

Petitioner : Through Mr. Amjad Hussain Qureshi, Advocate.

Respondents : Nemo.

Date of Hearing : 01.10.2026

Date of Order : 01.10.2026

ORDER

Abdul Hamid Bhurgri, J.— Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks, inter alia, setting aside of the judgment and decree dated 21.10.2024 passed by the learned Senior Civil Judge-IV, Karachi East, in Civil Suit No.2220/2021, as well as the order dated 12.08.2026 passed in Execution Application No.01/2025, whereby writ of possession has been ordered to be issued.

2. We have heard learned counsel for the petitioner and examined the material available on record. Admittedly, the judgment and decree dated 21.10.2024 has not been challenged by the petitioner through the remedy of appeal provided under the law. Instead, after initiation of execution proceedings, the petitioner has directly invoked the constitutional jurisdiction of this Court seeking, in substance, to have the judgment and decree set aside. Such course cannot ordinarily be permitted. Constitutional jurisdiction under Article 199 is extraordinary and cannot be invoked as a substitute for the appellate jurisdiction or for circumventing an adequate remedy provided by law. The Supreme Court has consistently held that where an adequate statutory remedy is available, the same is ordinarily required to be exhausted before invoking constitutional jurisdiction.

3. The position regarding the execution proceedings is no different. The petitioner has also not shown that the order dated 12.08.2026 passed by the Executing Court was assailed through any remedy of appeal/revision, if available under the law. The constitutional jurisdiction of this Court cannot be converted into appellate or revisional jurisdiction merely because execution of the decree has reached the stage of delivery of possession. The Supreme Court has deprecated bypassing remedies provided by law and directly resorting to Article 199, while this Court has likewise held that constitutional jurisdiction cannot be substituted for appellate or revisional jurisdiction.

4. There is yet another material aspect. According to the petitioner's own pleadings, after issuance of the writ of possession, he approached the Court below and filed applications under Section 12(2), C.P.C., Order XXI Rule 26, C.P.C., and Order IX Rule 13, C.P.C., which are stated to be pending adjudication. The pleas now sought to be raised before this Court, including those relating to fraud, want of jurisdiction and denial of opportunity, can therefore be examined by the competent Court, to the extent permissible under law, in the proceedings already instituted by the petitioner. Indeed, Section 12(2), C.P.C. provides an independent remedy where a judgment or decree is questioned on the grounds contemplated therein, including fraud, misrepresentation or want of jurisdiction.

5. Learned counsel has not been able to demonstrate any exceptional circumstance warranting bypass of the remedies available under the ordinary law or interference by this Court at this stage. Entertaining the petition in the present circumstances would amount to permitting parallel proceedings and allowing constitutional jurisdiction to be used as a substitute for remedies already available to, and in part actually invoked by, the petitioner. Article 199 itself predicates exercise of constitutional jurisdiction upon absence of another adequate remedy provided by law.

6. Consequently, this petition, being misconceived and not maintainable in the present form, is dismissed in *limine*, along with all pending applications. It is, however, clarified that nothing observed herein shall prejudice the merits of the applications already

filed by the petitioner before the Court below, which shall be considered and decided independently, strictly in accordance with law, on their own merits and without being influenced by any observation made in this order.

JUDGE

JUDGE
HEAD OF CONST. BENCHES

Ayaz Gul