

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-166 of 2025

[Mst. Hameeda Bai vs. Mst. Sakina and others]

Petitioner: Through Mr. Aaquib Rajpar, Advocate.

Date of Hearing & order: 03.03.2025

ORDER

ARSHAD HUSSAIN KHAN, J. The petitioner through instant petition has challenged the judgment dated 09.01.2025 passed by VIIth Additional District Judge, Karachi-South in FRA No.265/2024 whereby judgment dated 20.09.2024 passed by the XIth Senior Civil Judge / Assistant Sessions Judge / Rent Controller, Karachi-South in Rent Case No.458/2022 was maintained and FRA was dismissed.

2. Brief facts of the case are that the respondent No.1 filed Rent Case No.458/2022 for ejectment of the petitioner from the demise rented premises being Flat No.11, 5th Floor, Multani Manzil Plot No.Rs-3/12, School Road, Ramswami, Karachi on the ground of default and personal need. After recording the evidence and hearing the parties, the Trial Court allowed the rent case on both grounds viz. default and personal bonafide need and directed the petitioner to hand over the peaceful vacant possession of the rented premises to the respondent No.1 within ninety days. Said judgment was assailed by the petitioner by filing Frist Rent Appeal No.265/2024 and the Appellate Court maintained the judgment of the Trial Court and dismissed the appeal. Hence, this petition.

3. Learned counsel for the petitioner contends that impugned judgments of both the courts below are against the law, facts, justice and equity; that the Trial Court has failed to appreciate that the landlady has failed to appear in witness box and examined her attorney, which shows malafide on her part; that attorney of landlady failed to prove that the landlady required the demised premises for personal use in good faith and also the default on the part of the petitioner; that the impugned judgments of both the Courts below suffer from illegality in as much as they have not considered the defence of the petitioner despite production of oral and documentary evidence, which was not rebutted by the respondent No.1; that the findings of both the Courts below are based on

conjecture and surmises and liable to be set-aside. He lastly prayed that the instant petition may be allowed and both impugned judgments may be set-aside.

4. Heard learned counsel for the petitioner and perused the record carefully.

5. In the instant case, the two courts below have given concurrent findings against which the petitioner has not been able to bring on record any concrete material whereby such findings could be termed as perverse or having a jurisdictional defect or based on misreading of evidence. It is well settled that if no error of law or defect in the procedure has been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also well settled law that concurrent findings of the two courts below are not to be interfered in the constitutional jurisdiction, unless extra ordinary circumstances are demonstrated, which in the present case is lacking.

6. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice¹. It may also be observed that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided², and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is also well settled that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

7. It is also well settled principle of law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts, even if such findings are erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of mis-reading or non-reading of evidence or if the findings are based on evidence which may cause miscarriage of justice but it is not proper for this Court to disturb the findings of facts through reappraisal

¹ Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

² Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413].

of evidence in writ jurisdiction or exercise this jurisdiction as substitute of revision or appeal. The Supreme Court of Pakistan in the case of Farhat Jabeen v. Muhammad Safdar and others [2011 SCMR 1073] has held as under:-

"Heard. From the impugned judgment of the learned High Court, it is eminently clear that the evidence of the respondent side was only considered and was made the basis of setting aside the concurrent finding of facts recorded by the two courts of fact; whereas the evidence of the appellant was not adverted to at all, touched upon or taken into account, this is a serious` illegality committed by the High Court because it is settled rule by now that interference in the findings of facts concurrently arrived at by the courts, should not be lightly made, merely for the reason that another conclusion shall be possibly drawn, on the reappraisal of the evidence; rather interference is restricted to the cases of misreading and non-reading of material evidence which has bearing on the fate of the case."

8. In view of the above observations and the law laid down by the Hon'ble Supreme Court of Pakistan, the present constitutional petition is dismissed *in limine* being not maintainable alongwith pending applications.

JUDGE