

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. S-78 of 2026
(Hascol Petroleum Limited versus Shahzaib Rind & another)

Date	Order with signature of Judge
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Date of hearing and order: 02.2.2026

Syed Ali Ahmed Zaidi, advocate for the petitioner
Mr. Munim Masood advocate for respondent No.1
Mr. Ali Safdar Depar, Assistant AG

ORDER

Adnan-ul-Karim Memon, J. – Petitioner has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- a. *Issue a writ of certiorari or any other appropriate writ, order or direction, thereby calling for and quashing the Order dated 05.01.2026 passed by Respondent No. 2 (learned Rent Controller 1st, Malir) in Rent Case No. 20 / 2025 titled [Shahzaib Rind v. Hascol Petroleum Limited], being without lawful authority, suffering from jurisdictional illegality, and contrary to public policy and settled law;*
- b. *Declare that the disputes arising out of or in connection with the Lease Deed dated 16.05.2017 between the parties are covered by the arbitration agreement contained in Clause 11 thereof, and that the parties are bound to resolve the same through arbitration in accordance with law;*
- c. *Direct Respondent No.1 to submit to arbitration in terms of Clause 11 of the Lease Deed dated 16.05.2017;*
- d. *Stay the proceedings in Rent Case No.20/2025 pending before Respondent No.2, during the pendency of the instant Constitutional Petition, and thereafter until resolution of disputes through arbitration;*
- e. *Restrain Respondent No.1, his agents, attorneys, and any person acting on his behalf, from taking any coercive steps, including eviction or dispossession of the Petitioner from the Demised Premises, otherwise than in accordance with law and the Lease Deed dated 16.05.2017.*

2. The instant Constitutional Petition has been filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, calling into question the legality of the Order dated 05.01.2026 passed by the learned Rent Controller, Malir, Karachi, in Rent Case No. 20/2025, whereby the Petitioner's application under Section 34 of the Arbitration Act, 1940 read with Section 94 CPC was dismissed.

3. The case of the Petitioner is that Respondent No.1 instituted Rent Case No. 20/2025 seeking ejectment of the Petitioner on the alleged ground of default in payment of rent. The Petitioner asserts that the allegation of default is false and mala fide, as the relationship between the parties is governed by a registered Lease Deed dated 16.05.2017, executed for a long-term commercial lease of fifteen (15) years for the establishment and operation of a filling/service station. It is urged that at the time of handing over possession, the land was barren, and the

Petitioner, relying upon the security of tenure assured under the Lease Deed, made substantial and irreversible investments by constructing permanent infrastructure and commercial facilities. However, the Lease Deed guarantees quiet, peaceful, and uninterrupted possession to the Petitioner and contains strict negative covenants restraining the Lessor from alienation or interference during the subsistence of the lease. It further grants the Petitioner a right of first refusal in case of sale of the demised premises. It is averred that, most importantly, the Lease Deed contains a broad and binding arbitration clause (Clause 11), providing that all disputes arising out of or in connection with the Lease Deed shall be resolved through arbitration. However, upon receipt of notice of the rent proceedings, the Petitioner, without submitting to the jurisdiction of the Rent Controller on merits, filed an application under Section 34 of the Arbitration Act, 1940, seeking a stay of the rent proceedings and reference of the dispute to arbitration in accordance with the agreed arbitration clause. However, vide the impugned Order dated 05.01.2026, the learned Rent Controller dismissed the said application. The Rent Controller held that the Lease Deed was executed against monthly rent and was not “coupled with interest,” that the demised premises were given on a monthly tenancy, and that the Rent Controller acted as a persona designata and not as a “Court” within the meaning of the Arbitration Act, 1940. It was further held that the existence of an arbitration clause does not oust the jurisdiction of the Rent Controller, particularly in matters of eviction governed by special rent laws. Reliance was also placed on Clause 7.4 of the Lease Deed to hold that the Lessor was entitled to seek redress before a court of law for recovery of rent and eviction. The learned Rent Controller additionally referred to earlier proceedings between the parties and concluded that the application under Section 34 of the Arbitration Act was not maintainable. The Petitioner is aggrieved by the impugned Order as being without lawful authority, internally contradictory, based on a misreading of the Lease Deed and record, and passed in disregard of the binding arbitration agreement and settled principles of law promoting arbitration. Hence, the present Constitutional Petition has been preferred.

4. Learned counsel for the Petitioner submits that the impugned order is contrary to the settled public policy of Pakistan, which unequivocally favors arbitration as the preferred mode of dispute resolution in commercial matters and mandates strict enforcement of arbitration agreements freely entered into by parties. The prevailing legal position obligates courts and tribunals to refrain from interference once an arbitration agreement exists, unless such agreement is shown to be illegal, void, or incapable of performance none of which has been pleaded or established in the present case. It is contended that by refusing to give effect to Clause 11 of the Lease Deed and permitting rent proceedings to continue, Respondent No. 2 has undermined party autonomy, violated public policy, and

encouraged forum shopping, rendering the impugned order constitutionally unsustainable. The order further suffers from a fatal jurisdictional inconsistency: while Respondent No. 2 has held that the Rent Controller is not a “Court” but a persona designata, he has nevertheless relied upon Clause 7.4 of the Lease Deed, which permits recourse only to a “Court of Law.” Even on this strict interpretation, Clause 7.4 does not contemplate proceedings before a persona designata. Having declared himself not to be a court, Respondent No. 2 could not lawfully invoke Clause 7.4 to assume or continue jurisdiction, making the reasoning internally contradictory and without lawful authority. Counsel further submits that Clause 7.4 is merely a general remedial provision regarding alleged arrears and does not exclude arbitration or carve out rent disputes from the arbitration covenant. The Lease Deed must be read as a whole to give effect to the true commercial intent of the parties, with Clause 11 constituting the agreed dispute-resolution mechanism. The impugned order adopts a fragmented and mechanical interpretation, impermissibly elevating Clause 7.4 to defeat the arbitration clause and dismantle the contractual framework. It is also argued that the impugned order violates the doctrine of *Kompetenz-Kompetenz*, under which the arbitral tribunal is the primary authority to determine its own jurisdiction, including the question of arbitrability. In such circumstances, the wide wording of the arbitration clause, even the issue of arbitrability, constitutes a dispute arising out of the contract, which Respondent No. 2 unlawfully pre-empted at the threshold. Learned counsel further submits that the Lease Deed guarantees the Petitioner quiet, peaceful, and uninterrupted enjoyment of the demised premises for the entire lease term and its renewal. The initiation and continuation of ejectment proceedings, without lawful termination of the Lease Deed and without recourse to arbitration, constitute a direct breach of this covenant. He added that Additional clauses restraining alienation, prohibiting encumbrance, and granting a right of first refusal clearly evidence the parties’ intention to create a long-term commercial relationship, inconsistent with a month-to-month tenancy. The impugned order commits a grave error of law by equating the monthly payment of rent with monthly tenancy, as a fixed-term registered lease does not lose its character merely because rent is payable monthly. It is urged that Respondent No. 2 further exceeded jurisdiction by prejudging substantive rights at an interlocutory stage while deciding a Section 34 application. It is also pointed out that the impugned order records an incorrect factual finding by stating that Respondent No. 1 had previously filed a Section 34 application in Rent Case No. 03/2021, whereas the said application was filed by the Petitioner, demonstrating non-application of mind. While an earlier constitutional petition was dismissed on 11.04.2022, the same was not challenged further only because the parties entered into an amicable settlement in July 2023, pursuant to which earlier rent proceedings were withdrawn. Such a settlement cannot amount to acquiescence in

an erroneous jurisdictional view nor bar a challenge to a subsequent illegal order. Lastly, it is submitted that no efficacious alternate remedy is available to the Petitioner, as the impugned order is purely interlocutory and dismisses only a Section 34 application, against which no appeal lies. Since the controversy strikes at the root of jurisdiction and the refusal to enforce an arbitration agreement, the constitutional petition is maintainable and calls for immediate interference by this Court. He prayed to allow this petition.

5. Learned counsel for the respondents raised a preliminary objection regarding the maintainability of the petition and submitted that the petitioner's contentions are misconceived and legally untenable. He argued that although arbitration is encouraged, statutory forums created under special laws, including Rent Controllers, cannot be ousted by contractual clauses. Matters relating to tenancy, ejectment, and rent are governed exclusively by rent legislation and are inherently non-arbitrable; therefore, the impugned order upholds, rather than offends, public policy by giving effect to statutory jurisdiction. He contended that enforcement of arbitration agreements is not automatic and that courts are duty-bound to examine arbitrability and the overriding effect of special statutes. In the present case, Respondent No. 2 rightly declined to stay the rent proceedings under Section 34. The allegation of forum shopping was termed baseless, as it is the petitioner who, after submitting to rent proceedings, now seeks to bypass the statutory forum, attracting the principle of approbation and reprobation. He added that the alleged jurisdictional contradiction was described as illusory. The Rent Controller's characterization as a *persona designata* does not negate statutory jurisdiction. Clause 7.4 of the Lease Deed expressly permits recourse to a court of law for rent-related relief and, when read harmoniously with Clause 11, operates as an exception to arbitration in rent and tenancy matters, consistent with statutory law. Learned counsel further submitted that the aforesaid doctrine applies only to arbitrable disputes and does not bar the Rent Controller from examining jurisdiction at the threshold. He submitted that the Contractual covenants of quiet enjoyment and long-term intent cannot override rent laws, nor does initiation of rent proceedings amount to their breach. Monthly payment of rent may lawfully attract rent law jurisdiction even under a registered lease. He maintained that Respondent No. 2 did not prejudge substantive rights, as the findings were only *prima facie* for deciding jurisdiction. Any alleged factual misstatement regarding a prior Section 34 application is inconsequential and does not vitiate the order. The earlier constitutional petition and subsequent settlement do not reopen settled jurisdictional issues. Finally, it was argued that the impugned order is interlocutory, an adequate alternate remedy is available, and constitutional jurisdiction cannot be invoked to circumvent the statutory process. On these grounds, learned counsel prayed for dismissal of the petition.

6. Having heard learned counsel for the parties at length and examined the record with their assistance, the pivotal controversy in the present petition revolves around the effect and enforceability of the arbitration clause contained in the registered Lease Deed vis-à-vis the statutory jurisdiction of the Rent Controller under the rent laws.

7. It is not disputed that the Lease Deed dated 16.05.2017 contains an arbitration clause couched in wide terms, nor is it disputed that arbitration as a mode of dispute resolution is encouraged under the prevailing legal policy. However, it is equally well settled that the existence of an arbitration agreement, by itself, does not automatically oust the jurisdiction of a forum created under a special statute. Courts are duty-bound, at the threshold, to examine whether the subject matter of the dispute is arbitrable and whether the arbitration clause can override an express statutory scheme.

8. In the present case, the proceedings initiated by Respondent No.1 are for ejectment and alleged default in payment of rent matters which squarely fall within the domain of the Rent Controller under the applicable rent legislation. Such jurisdiction is statutory in nature and cannot be curtailed or excluded merely by private agreement between the parties. Disputes relating to tenancy, eviction, and rent have consistently been treated as non-arbitrable, being governed by special law enacted in public interest to regulate landlord tenant relations.

9. The contention of the Petitioner that Clause 11 of the Lease Deed mandates reference of all disputes to arbitration cannot be accepted in isolation. The Lease Deed is required to be read as a whole. Clause 7.4 expressly contemplates recourse to a court of law for recovery of rent and allied reliefs. When harmoniously construed, the contractual scheme itself recognizes that rent and tenancy-related disputes may be agitated before a legal forum, which aligns with the statutory framework. Thus, the arbitration clause cannot be construed as exclusive or overriding in respect of matters which the law vests in the Rent Controller.

10. The argument based on the doctrine of *Kompetenz-Kompetenz* is also of no assistance to the Petitioner. The said doctrine operates only where the dispute is otherwise arbitrable. Where the law itself bars arbitration or confers exclusive jurisdiction on a special forum, the Rent Controller or court is not only competent but obliged to determine arbitrability at the outset. The learned Rent Controller, therefore, did not act without jurisdiction in declining to stay the proceedings under Section 34 of the Arbitration Act, 1940.

11. As regards the plea that the Lease Deed represents a long-term commercial arrangement and not a month-to-month tenancy, the characterization of tenancy for the purposes of rent law is governed by statute and not merely by the nomenclature of the contract or the fact that rent is payable monthly. Even a registered lease, depending upon its legal effect and statutory operation, may attract the jurisdiction of the Rent Controller. The findings recorded by the learned Rent Controller in this regard are *prima facie* and confined to jurisdiction, and cannot be said to amount to prejudging the merits of the case.

12. The alleged factual misstatement regarding an earlier Section 34 application, even if assumed, does not go to the root of the matter nor vitiates the impugned order, which is otherwise founded on statutory jurisdiction and settled principles of non-arbitrability of rent disputes. Likewise, the earlier constitutional petition and subsequent settlement do not create any estoppel against the operation of law nor reopen jurisdictional issues determined in accordance with statute.

13. Lastly, the impugned order is interlocutory in nature, passed during pendency of rent proceedings, and the Petitioner has an adequate remedy to raise all available grounds before the Rent Controller and, if necessary, in appeal against a final order.

14. It is well settled that Constitutional jurisdiction cannot be invoked to short-circuit the statutory process merely on the basis of an arbitration clause which, in the facts of the case, does not govern the dispute in question.

15. For the foregoing reasons, this Court finds that the learned Rent Controller committed no illegality or jurisdictional error in dismissing the Petitioner's application under Section 34 of the Arbitration Act, 1940. The arbitration clause does not override the statutory jurisdiction of the Rent Controller in matters of rent and ejectment. Consequently, the petition is devoid of merit and does not warrant interference under Article 199 of the Constitution.

16. This petition is accordingly dismissed with pending application(s).

JUDGE

SHAFI