

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-644 of 2025

[Arshad Habib vs. Zahid Ali Khan]

Petitioner:	By Barristers Jawad Ahmed Qureshi and Muhammad Mubashir Khilji, advocates
Respondent:	By Aqeel Ahmed Siddiqui, Advocate
Date of hearing	22.10.2026
Date of Decision	22.10.2026

O R D E R

ADNAN-UL-KARIM MEMON J:- Petitioner Arshad Habib has challenged the judgment dated 29.09.2025 passed by the 2nd Additional District Judge, Tando Allahyar, in First Rent Appeal No.03 of 2025, whereby the appeal filed by the Respondent was allowed, and the judgment dated 07.05.2025 passed by the Rent Controller dismissing Rent Application No.07 of 2023 was set aside.

2. The case of the Petitioners is that they have been in continuous possession of Shop No.8, Ashfaq Market, Tando Allahyar, for more than fifty years under a tenancy created in favour of their father, Mohammad Habib, through an agreement dated 21.10.1974. After his demise, the Petitioners continued the tenancy under successive landlords. Learned counsel contended that the Respondent failed to establish any of the grounds of default, subletting or personal bona fide need; that the impugned judgment suffers from misreading and non-reading of evidence, material irregularity, and legal infirmity; that the Respondent admitted during cross-examination that the Petitioners had been occupying the premises for several decades and that he had refused to accept rent sent through money orders for August to October 2023; that respondent's witnesses and the postal official also corroborated the refusal of rent, hence, no wilful default could be attributed to the Petitioners; that the allegation of subletting was neither specifically pleaded nor proved, as Petitioner No.2 Shahid Habib is the real brother of Petitioner No.1, and no evidence of independent possession or consideration was produced. The plea of personal *bona fide* need was also vague and unsupported by cogent evidence, particularly when the respondent owned other shops in the same market; that the expression “undesirable tenant” is not an independent statutory ground for ejectment under the Sindh Rented Premises Ordinance, 1979. Learned counsel further argued that the Rent Controller, after appreciating the evidence, twice dismissed the ejectment application, whereas the Appellate Court unlawfully substituted its own findings without identifying any perversity, illegality, or

misreading of evidence; that the impugned judgment is based on conjectures and surmises, fails to determine the statutory grounds of ejectment independently, and has resulted in miscarriage of justice. The Petitioners, therefore, seek setting aside of the impugned judgment dated 29.09.2025 and restoration of the judgment dated 07.05.2025 passed by the Rent Controller. In support of his contention learned counsel relied upon the cases of Muhammad Nisar v. Izhar Ahmed Shaikh and others **(2014 PLD 347)**; Muhammad Moosa Khawaja and another v. Haji Muhammad Umar **(1995 MLD 1880)**; Jiand Rai v. Arjan Das and 3 others **(2016 MLD 116)**; M/s. United Bank Ltd v. Haji Abdul Razaak & Co. **(1993 MLD 2575)**

3. Learned counsel for respondent contended that the petition is not maintainable, as neither any substantial constitutional question is involved nor any jurisdictional defect has been pointed out to attract invocation of Article 199 of the Constitution; that petitioner No.1, being the admitted tenant, neither appeared before the trial Court nor complied with its order regarding production of evidence, and had not authorized petitioner No.2 through special power of attorney to pursue the matter; that, despite service of notice under Section 18 of the Sindh Rented Premises Ordinance, 1979, the petitioners neither replied to the notice nor tendered rent from July 2023 onwards, thereby establishing default and subletting. Regarding personal *bona fide* need, he submitted that the premises, situated behind his shop, were genuinely required by the respondent for his own business, and the landlord was entitled to choose how to utilize his property. He maintained that the appellate Court had rightly appreciated the evidence and documents in accordance with the remand order, whereas the trial Court had failed to properly consider the questions of default and personal *bona fide* need. Accordingly, he prayed for dismissal of the petition with costs.

4. Heard learned counsel for the parties and perused the record with their assistance and the case law cited at the bar.

5. Learned Appellate Court held that the Rent Controller had mis-appreciated the evidence and committed legal error while dismissing the rent application. It observed that the respondent/appellant had established ownership through registered sale deed, whereas the rent receipts produced by the petitioner/respondent consistently reflected Arshad Habib as the tenant. Since petitioner/respondent No.1 failed to pay rent from July 2023 onwards and petitioner/respondent No.2 had no contractual relationship with the respondent/appellant, the default stood established, and the refusal of rent tendered by petitioner/respondent No.2 did not absolve the actual tenant of his liability. The Court further observed that petitioner/respondent No.1 neither appeared as witness nor explained the arrangement regarding possession, giving rise to an adverse inference, while petitioner/respondent No.2 also failed to establish his authority to represent petitioner/respondent No.1. Regarding personal *bona fide* need, the Court held that

the respondent/ appellant had specifically stated that the premises were required for his own business and that the landlord was the best judge of his requirements, which could not be dictated by the tenant. Consequently, finding the impugned judgment dated 07.05.2025 legally unsustainable, the Appellate Court allowed the appeal, set aside the Rent Controller's judgment, and directed the petitioners/respondents to vacate and hand over peaceful possession of Shop No.08, Ashfaq Market, Tando Allahyar, within one month.

6. The controversy essentially relates to the assessment of evidence concerning default in payment of rent, alleged subletting, and the respondent's personal bona fide requirement of the demised premises.

7. The registered sale deed establishes the respondent's ownership, while the rent receipts relied upon by the Appellate Court identify petitioner No.1 as the tenant. An unsuccessful tender by a person not legally entitled to discharge the tenant's liability may not necessarily protect the tenant from the consequences of non-payment. As regards personal bona fide need, the landlord's choice to utilize his property for his own business ordinarily deserves due consideration.

8. The Appellate Court has recorded reasons for reversing the judgment of Rent Controller. In constitutional jurisdiction, this Court does not ordinarily substitute its own assessment for that of the competent appellate forum merely because another view is possible. Interference is warranted where the impugned judgment suffers from patent illegality, material misreading or non-reading of evidence, perversity, or failure to apply the governing law, which is not the case at hand.

9. Accordingly, the record confirms that the Appellate Court correctly appreciated the evidence and its findings regarding default and personal bona fide need are supported by the material available; no sufficient ground for interference under Article 199 of the Constitution is made out, hence the constitutional petition is dismissed.

JUDGE

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