

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-331 of 2024
(Zainullah – vs - Abdul Kalam Khan)

Date	Order with signature(s) of Judge(s)
Hg:/Priority.	

- 1. For hearing of Misc. No.2993/25
- 2. For hearing of main case.

18.08.2026.
Mr. Imamuddin Chandio, Advocate for the Petitioner.
Mr. Naseer Nehal Hashmi, Advocate for the Respondent.

ORDER

Nisar Ahmed Bhanbhro, J. This petition is directed against the orders dated 08.03.2023 and 28.02.2024 passed by the learned IInd Rent Controller (East), Karachi, in Execution Application No. 10 of 2020, whereby the execution application was allowed and a writ of possession was issued for handing over the demised premises to the landlord.

2. Counsel for the petitioner submits that the petitioner’s case has a chequered history. Earlier, Rent Case No. 256 of 2006 was filed between the elders of the parties, which culminated in a compromise decree whereby the rent was enhanced from Rs. 500/- to Rs. 5,000/- per month. He contends that there is no relationship of tenancy between the petitioner and respondent No. 2, as the demised premises had been rented out to the grandfather of the petitioner. He further submits that, after the compromise between the parties, another Rent Case, bearing No. 142 of 2021, was filed on the ground of default, wherein an application under Section 16(1) of the SRPO, 1979, was moved and allowed, directing the petitioner to deposit the rent from the month of August 2020 until the final disposal of the rent case with the trial Court within one month. However, the petitioner failed to comply with the said order dated 01.12.2021; consequently, his right of defence was struck off vide order dated 10.03.2022. He contended that, during the intervening period, the rent amount was deposited with the trial Court; however, the said plea was not taken into consideration, and the execution application filed by the applicant was allowed, resulting in the issuance of a writ of possession. He submits that, since there was no default and the petitioner had been paying the rent regularly, the order passed in the execution application was not sustainable in law may be set aside.

3. Conversely, Mr. Naseer Nehal Hashmi, learned counsel for respondent No. 2, submits that, after the rent case was allowed, an FRA bearing No. 77 of 2022 was preferred, which was also dismissed vide order dated 14.05.2022. The said order passed by the learned appellate Court was challenged before this Court in its

constitutional jurisdiction through Const. Petition No. 756 of 2022, which was also dismissed vide order dated 30.08.2022. He further submits that, since the judgment and decree passed by the courts below have been upheld up to this forum and have attained finality, the executing court was left with no option but to proceed with the execution and issue a writ of possession in favour of the decree-holder. He, therefore, submits that the instant petition, being misconceived, is liable to be dismissed with costs.

4. Heard arguments and perused the material available on record.

5. From a perusal of the record, it transpires that the rent case was allowed vide order dated 10.03.2022. The appeal preferred against the said order was dismissed, and the petition filed before this Court was also dismissed. Under these circumstances, the judgment and decree have attained finality, the executing court is left with no option but to execute the decree. Learned counsel for the petitioner has failed to point out that, while allowing the execution application, the executing court travelled beyond the decree or passed any order contrary to the judgment and decree. The contentions raised by petitioner, if accepted will tantamount to reopen the case, and such an exercise cannot be undertaken in the proceedings relating to execution of decree. Since no illegality or infirmity has been pointed out in the orders passed by the executing court, this petition, being devoid of merit, is dismissed along with the pending applications, if any.

JUDGE