IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Revision Application No.14 of 2026

Applicant	:	Muhammad Mehtab Alam son of Muhammad Tahir Hussain *Through* Mr. Muhammad Tariq, Advocate.
Respondent No.1	:	Syed Saeed Husain son of S. Nisar Hussain *Through* M/s. Manzoor Hameed Arain, Riaz Moin Siddiqui Advocates
Respondents	:	The State *Through* Mr. Muhammad Mohsin Mangi, Deputy Prosecutor General Sindh.
Date of hearing	:	11.11.2026
Date of order	:	18.11.2026

O R D E R

KHALID HUSSAIN SHAHANI, J. **-** The applicant, through this criminal revision under sections 435 and 439, Cr.P.C., assails the order dated 20.11.2025, whereby the learned VII-Additional Sessions Judge, Karachi Central, dismissed his complaint No.44/2025 under the Illegal Dispossession Act, 2005 (the Act), at the preliminary stage, holding that the dispute was essentially civil and no prima facie case of illegal dispossession was established.

2. Briefly, the applicant entered into an agreement of sale dated 05.09.2018 with respondent No.1, Syed Saad Hussain, concerning the rooftop/penthouse of Al-Habib Arcade, Plot No.SC-17, Block-H, North Nazimabad, Karachi, for Rs.1,10,00,000/-. The transaction was subsequently cancelled through an agreement dated 09.06.2022, providing for refund of Rs.28,00,000/- in full and final settlement. The applicant, however, relies upon a subsequent affidavit dated 21.06.2022, whereby respondent No.1 acknowledged his investment of Rs.1,30,00,000/-, undertook its repayment and, significantly, admitted handing over physical possession of the disputed premises to the applicant until clearance of the amount. The applicant alleges that, notwithstanding this arrangement, respondent No.1 and his associates forcibly broke open the locks and dispossessed him on 05.12.2024. The respondents deny the allegations, asserting that the original transaction stood cancelled, the financial claims were settled and the applicant was never in lawful possession.

3. Learned counsel for the applicant contended that the trial Court overlooked the subsequent affidavit, particularly paragraph 8 thereof, expressly acknowledging delivery of possession, as well as the material collected during police inquiry under section 5 of the Act. Conversely, learned counsel for the respondents maintained that the dispute emanates from a cancelled contractual transaction, involving neither established possession nor any independent act of forcible dispossession, and therefore falls outside the Act. Learned D.P.G. assisted the Court on the applicable legal provisions. Arguments heard. Record perused.

4. At the outset, the impugned order, declining to proceed upon the complaint at the preliminary stage, does not fall within the categories of orders appealable under section 8-A of the Act. The revisional jurisdiction of this Court under sections 435 and 439, Cr.P.C., read with section 9 of the Act, is therefore available to examine its legality and propriety. On merits, the Act protects lawful owners and occupiers against forcible and wrongful dispossession. Although it cannot be invoked for enforcement of contractual obligations or adjudication of ordinary disputes of title, the existence of a civil transaction does not, by itself, exclude its operation where an independent act of unlawful dispossession is prima facie disclosed. The distinction assumes particular significance in view of section 3(3) of the Act, introduced through the amendment of 2017.

5. Examined in this perspective, the learned trial Court appears to have attached decisive significance to the cancellation agreement dated 09.06.2022, without adequately considering the subsequent affidavit dated 21.06.2022, particularly paragraph 8, wherein respondent No.1 stated that “That I undertake with this affidavit the physical possession of roof/Paint House is handed over to MUHMMAD MAHTAB ALAM until clear of amount of above mentioned by me.” This acknowledgment, emanating from the person disputing the applicant’s possession, constitutes material evidence requiring judicial consideration. While cancellation of the sale agreement may extinguish contractual rights arising therefrom, it does not necessarily establish surrender of physical possession, particularly where a subsequent document acknowledges its delivery or retention under a separate arrangement. Equally, such acknowledgment is not conclusive proof of continued possession or subsequent dispossession. The controlling consideration is whether the applicant was in lawful occupation immediately before the alleged occurrence and whether he was forcibly deprived thereof without lawful authority. These distinct questions could not be resolved merely by characterizing the dispute as civil.

6. The police inquiry material, statements, site sketch and accompanying documents also required examination in conjunction with the subsequent affidavit. The builder's letter and SBCA correspondence may bear upon the history and character of the premises but do not conclusively determine possession on the date of the alleged occurrence. Likewise, the alleged financial settlement or electronic evidence relied upon by the respondents cannot, without proper appraisal, conclusively establish surrender of possession. The inquiry report is not binding upon the Court; nevertheless, its material contents must receive independent judicial consideration. The impugned order does not adequately reconcile the competing documents or examine whether the allegation of breaking open locks and forcible occupation discloses an offence under section 3(1) or 3(3) of the Act. The resultant non-reading of material evidence has affected the exercise of jurisdiction.

7. It is settled that the Court, while considering issuance of process, must ascertain whether sufficient grounds exist for proceeding, without undertaking a premature determination of disputed facts or insisting upon proof sufficient for conviction. Conversely, criminal process cannot issue merely upon an unsubstantiated assertion of possession. The decision in Muhammad Murad Bhutto v. Lal Bux Kosh and others (Criminal Revision Application No.S-57/2021, decided on 16.09.2022) is instructive to the extent that material bearing upon possession and alleged dispossession must receive proper judicial appraisal before declining to proceed under the Act. In the present case, the learned trial Court failed to adequately address the legal effect of the subsequent acknowledgment of possession and the allegation of an independent act of forcible dispossession. The impugned order thus suffers from material irregularity warranting revisional interference.

8. Consequently, this revision application is allowed. The impugned order dated 20.11.2025 is set aside and Complaint No.44/2025 is restored to its original position. The matter is remanded to the learned trial Court to reconsider the complaint, the cancellation agreement, the subsequent affidavit, the investigation material and the rival contentions, particularly with reference to the applicant's alleged prior lawful possession and the occurrence dated 05.12.2024, and thereafter pass a fresh, speaking order in accordance with law, after affording the concerned parties an opportunity of hearing. Any further inquiry considered necessary may be undertaken within the statutory framework. The observations made herein

are tentative, confined to the legality of the impugned order, and shall neither prejudice the parties nor be construed as a direction to issue process, restore possession or determine criminal liability. The learned trial Court shall decide the matter independently and expeditiously.

9. The revision application stands disposed of in the above terms, along with pending applications, if any.

J U D G E