

# IN THE HIGH COURT OF SINDH KARACHI

**CP No.S-1296 of 2025**

*(Khawaja Arshad Javaid v. Mst. Shahnaz Shah and others)*

Petitioners : *Khawaja Arshad Javaid* through Mr. Qaim Ali Memon, advocate a/w Azhar Ali

Respondents : *Mst. Shahnaz Shah and others* through Mr. Arsalan Raja, advocate and Mr. Muhammad Kamran, AAG

**Date of hearing and order: 20.11.2025**

## **ORDER**

**Nisar Ahmed Bhanbhro, J.** This petition arises out of the order dated 07<sup>th</sup> May, 2025 and 7<sup>th</sup> November, 2025 (**impugned orders**) passed by the Court of learned Additional Controller of Rent Clifton Cantonment Karachi in Rent Case No.61/2024 filed by Shahnaz Shah, Zeeshan Ahmed and Rehan Ahmed, the widow and sons of the original owner.

2. The applicants did not appear before the learned trial Court and exparte proceedings were initiated subsequent to adoption of all modes of service including publication. Ejectment application was granted with direction to the petitioner to vacate the demised premises i.e. 3-B/II, Khayaban-e-Bahria, Phase-5, Defence Housing Authority, within a one month and to pay arrears of the rent amount Rs. 37,80,000/- in case of non-compliance, the respondents were directed to get the premises vacated from the Court of competent jurisdiction. The execution application was preferred before the Court of VIII<sup>th</sup> Senior Civil Judge Karachi South wherein notices for the execution of the order dated 07<sup>th</sup> May, 2025 were issued to the petitioner. On receiving notice, the petitioner appeared before the learned Additional Controller of Rent and filed application under Section 12(2) CPC for setting aside of the order dated 07<sup>th</sup> May, 2025 and trial de novo on the ground that exparte judgment was obtained through misrepresentation, fraud and the

Court was not vested with the jurisdiction as in case the relationship between the parties as that of landlord and tenant did not exist. The said application was also declined vide order dated 7<sup>th</sup> November, 2025 and this petition has been preferred against such proceedings.

3. Mr. Qaim Ali Memon, learned counsel for the petitioner, argued that the petitioner was residing in the disputed premises as its owner by virtue of the sale agreement executed in the year 1988 by the original owner Syed Rafi Ahmed available at Page-39 of the Court's file. He further argued that the notices in the rent application were not served upon the petitioner and no inquiry as required under Section 17 of the Cantonment Rent Restriction Act, 1963 was held. He further argued that the Rent Controller was vested with the jurisdiction to entertain the matters wherein the tenancy was not disputed between the parties and when the claim was based upon an oral tenancy agreement then it was obligation upon tenant to establish tenancy. He argued that petitioner was condemned unheard, therefore, impugned orders be set aside and fresh trial may be ordered. He placed reliance on the cases of *Qudratullah Raisani and another v. Abdullah* (2023 MLD 121), *Khadim Hussain v. Additional District Judge, Layyah and 12 others* (2023 YLR 729), *Mst. Shamshad Begum through Attorney v. Shahlid Ali and 3 others* (2025 CLC 1418).

4. Mr. Arsalan, learned counsel for the respondent, argued that the petitioner was put into demised premises under an oral rental agreement in the year 1987 and he was residing therein under the said arrangement. He argued that the original owner Syed Rafi Ahmed passed away leaving behind respondents No.1 to 3 as his legal heirs and by virtue of inheritance they became owners and landlord of the demised premises. He further argued that oral tenancy agreement was not barred under Section 5 of SRPO, 1979. He further argued that the petitioner filed suit for specific performance in the year 2018 which too was dismissed by the learned trial Court and no appeal has been preferred against such

order thus order passed by the learned trial Court dismissing the application of the suit attained finality. He further argued that sale agreement available at Page 93 of the file did not contain signature of the marginal witnesses so also CNIC of the original owner Syed Rafi Ahmed. He next contended that the order passed by the Rent Controller was appealable and no appeal was preferred, therefore, application filed under Section 12(2) CPC was not maintainable. He placed reliance on the case of *Messers bright link Mobile Phone and Accessories through Proprietor v. Muhammad Qamar Ghani (PLD 2017 Sindh 409)*. He prayed to dismiss the petition.

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

6. Admittedly, the demised premises were owned by Syed Rafi Ahmed who has died in 1989 and the Respondents No.1 to 3 by virtue of the operation of law became landlord of the demised premises on his death. As far as the title of the demised premises is concerned, there is no dispute from either side that the premises were owned by Syed Rafi Ahmed however a claim has been made by the petitioner that he became owner by virtue of sale agreement which did not attain finality became redundant when the parties did not seek its enforcement through the competent Court of law. Admittedly, the suit was preferred by the petitioner in 2018 after lapse of 30 years and that too was dismissed stamping the ownership of the respondents No.1 to 3 in the demised premises. On institution of the rent application, the notices were issued to the petitioner which were served upon him through his servant whose name is mentioned in Page 3 of the order dated 7<sup>th</sup> May, 2025 namely Saeed Rehman, on failure of the petitioner to appear before the Rent Controller publication was ordered and the service was held good through order dated 11.03.2025, thereafter the respondents No.1 to 3 were afforded an opportunity for filing exparte proof and the application was decreed exparte.

7. Petitioner filed application under Section 12(2)CPC was filed before the Rent Controller on 22<sup>nd</sup> October, 2025. The learned Rent Controller dismissed the application on the ground that the service of the notices was effected on the petitioner through all modes and he himself chose to remain absent. Perusal of the contents of the application filed under Section 12(2) CPC reflects that the said application is based upon the agreement to sale purportedly executed between the original owner Syed Rafi Ahmed and the petitioner. No other ground was given except that the petitioner was residing in the United States alongwith legal heirs and he was not in knowledge of the rent proceedings. The Cantonment Rent Restriction Act, 1963, provides the provision of appeal against all orders of the Rent Controller. Section 24 whereof being relevant is reproduced below for the sake of convenience:

**24. Appeal.**— (1) *Any party aggrieved by an order, not being an interim order, made by the Controller may, within thirty days of such order, prefer an appeal to the High Court.*

(2) *The High Court may, pending the final disposal of the appeal, make an order staying further proceedings or action on the order of the Controller: Provided that no such order shall be made if the appeal has been preferred from an order made under subsection (6) of section 17A,*

(3) *The High Court shall, after perusing the record of the case and giving the parties an opportunity of being heard and, if necessary, after making such further enquiry either by itself or by the Controller as it may deem fit, make an appropriate order which shall be final.*

(4) *No order of the Controller except by an appeal under this section, and no order of the Appellate Court made under this Act shall be called in question in any Court by any suit, appeal or other legal proceedings.]*

8. From the perusal of the above provision of law, it is vivid and crystal clear that no order of the Controller except by an appeal under this section, and no order of the Appellate Court made under this Act shall be called in question in any Court by any suit, appeal or other legal proceedings. The legislature in its intent and wisdom has provided that order passed by the Rent Controller under the provision of Cantonment Rent Restriction Act, 1963 shall be

appealable and no other proceedings shall lie against the said order. Section 12(2) CPC comes and falls within the definition of other proceedings, this provision of law has excluded the application of this particular section in the rent matters before the Rent Controller established under this act. Since the petitioner by his own choice availed remedy of filing an application under Section 12(2) CPC remedy which was not available to him under the law. Though the learned Rent Controller did not render any findings as to maintainability of the proceedings under Section 12(2) CPC but it is a settled law that the Court has to regulate its business in terms of the statutory provisions provided under the statute. No doubt, in the present rent proceedings the issue of relationship and landlord and tenant was not adjudicated properly but for that reason the petitioner was required to file appeal before this Court under Section 24, where this issue could have been resolved but he chose to file application under Section 12(2) CPC.

9. With utmost respect and in my humble view the case laws relied upon by the parties are on different footings and do not attend the question of availing remedy under Section 12(2) CPC thus are distinguishable.

10. For what has been discussed herein above, since the substructure of instant petition was lying on no foundation, therefore, superstructure cannot be built on it. Consequently, this petition fails and same is hereby dismissed alongwith listed applications with no order as to costs.

**JUDGE**

Nadir\*

Karachi

Dated: 20.11.2025

Approved for Reporting