

## IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-244 of 2025

*'Muhammad Bilal Qureshi S/o Abdul Aziz vs. Muhammad Khurram Iftikhar and another'*

|                      |   |                                            |
|----------------------|---|--------------------------------------------|
| Petitioner           | : | Through Mr. Ashiq Muhammad,<br>Advocate    |
| Respondent No.1      | : | Through Mr. Naseer Ahmed Khan,<br>Advocate |
| Date of Hearing      | : | 20.05.2026                                 |
| Date of Announcement | : | 18.07.2026                                 |

### **JUDGMENT**

**MUHAMMAD HASAN (AKBER), J.-** The Judgment dated 04.03.2025 passed by the learned District & Sessions Judge, Karachi East in First Rent Appeal No.178/2024 [**impugned Judgment**] has been assailed in this petition, whereby the Order dated 06.08.2024 passed by the learned Rent Controller-I, Karachi East, in Rent Case No.191/2022 was set aside. The petitioner has been directed to vacate and hand over peaceful possession of Shop No. 5, Ground Floor, SASI Homes Apartments, Block 4, KDA Scheme No. 36, Gulistan-e-Jauhar, Karachi [**demised premises**] within 30 days.

2. Heard learned counsels for the parties, learned Additional Advocate General and perused the record. For brevity's sake, the respective contention of the parties will be discussed at the relevant portions in this Order.

3. Succinctly, Respondent No.1 filed Rent Case No.191/2022 through his attorney before the learned 1<sup>st</sup> Rent Controller, Karachi East, seeking ejectment of the petitioner from the demised shop on the grounds of personal *bona fide* need and willful default in payment of monthly rent. Respondent No. 1 claimed to be the registered owner of the demised shop by virtue of a conveyance deed dated 02.10.2014, through which he had purchased the shop from one Mst. Fareeda wife of Muhammad Shabbir Jan, who had herself acquired the same from the original sub-lessee Nasir Ahmed Khan through a

registered conveyance deed dated 18.11.2003. The Respondent No.1 further stated that after acquiring ownership, he executed a tenancy agreement dated 01.02.2015 with the petitioner at a monthly rent of Rs. 18,000 with 10% increase every 11 months. It is claimed that the petitioner paid rent till March 2022 and thereafter committed willful default, and the premises were also required for his personal need for the purpose of setting up his own business.

4. The petitioner, in his written statement, denied the relationship of landlord and tenant and claimed that he was a tenant of one Nasir Ahmed Khan who was the sub-lessee of the demised shop, and that he (petitioner) had subsequently purchased the shop from Nasir Ahmed Khan son of Bashir Ahmed Khan through a sale agreement dated 05.01.2022, on the strength of which he had instituted Civil Suit No.1166/2022 for specific performance of contract, which was pending before the civil Court. Lastly contended that the conveyance deed relied upon by Respondent No.1 was a fake and manipulated document having no entry in the office of the Sub-Registrar.

5. Both parties led their respective evidence before the learned Rent Controller, whereafter, the ejectment application was rejected vide Order dated 06.08.2024, which was reversed in First Rent Appeal No. 178/2024 by the learned District & Sessions Judge, Karachi East vide the impugned judgment dated 04.03.2025.

6. Section 2(f) of the Sindh Rented Premises Ordinance 1979 provides that a landlord is defined as the owner of the premises and includes a person who is, for the time being, authorised or entitled to receive rent in respect of such premises. It is equally settled under the law that a landlord need not necessarily be the owner of the property, and that in the absence of evidence to the contrary, the registered owner of a property is presumed to be the landlord and the person in possession of the premises is considered to be the tenant.

7. Secondly, Respondent No. 1 has produced a registered conveyance deed dated 02.10.2014, exhibited as Exh-A/4 in support of his ownership. The chain of title leading to this registered conveyance deed is clear and consistent; the demised shop was sub-leased to Nasir Ahmed Khan through an indenture of sub-lease dated 27.11.1991; Nasir Ahmed Khan thereafter sold the shop to Mst. Fareeda, through a registered conveyance deed dated 18.11.2003; Mst. Fareeda then sold the shop to Respondent No.1 through the registered conveyance deed dated 02.10.2014. This documented chain of ownership stands on a firm footing and was not effectively displaced by the petitioner before the Courts below.\_The petitioner's counterclaim to ownership rests entirely on a sale agreement dated 05.01.2022, which he allegedly executed with Nasir Ahmed Khan, son of Bashir Ahmed Khan, for the purchase of the demised shop. The petitioner's argument, therefore, has no merit in law and has been consistently rejected by the superior Courts of Pakistan, as held in **Rabia Bibi** and **numerous other cases**<sup>1</sup> that the pendency of a suit for specific performance of an agreement cannot be a valid ground to bar eviction proceedings and an ejectment application cannot be stayed or stalled on such a ground. As further held in '**Kassim & others v. S. Raheem Shah & others**' (1990 SCMR 647), in such circumstances, the landlord would be fully entitled to recover rent from the tenant until the civil Court passes a decree in favour of the claimant. It was further held that a sale

agreement is merely an agreement which does not transfer title, whereas title in immovable property passes only upon execution of a registered sale deed. In the present case also, the sale agreement remains unregistered and is also coupled with serious infirmities, as have been noted by the learned appellate Court. For instance, the indenture of sub-lease dated 27.11.1991, on which the petitioner himself relies to show his prior tenancy with the original sub-lessee, is in the name of Nasir Ahmed Khan son of Shabbir Muhammad Khan, while the sale agreement of 05.01.2022 describes the vendor as Nasir Ahmed Khan son of Bashir Ahmed Khan. Thus, the name of the father of the same person appears differently in two documents that the petitioner himself relies upon. These and other discrepancies are the subject matter of Civil Suit No. 1166/2022 pending before the civil Court. As for the purpose of these rent proceedings, the registered conveyance deed dated 02.10.2014 produced by Respondent No.1 is sufficient to establish his status as owner and landlord, at least at present.

8. Thirdly, it is also significant to note that the petitioner himself had filed a suit before a civil court for cancellation of the title documents of Respondent No.1, which suit was dismissed. In his cross-examination before the learned Rent Controller, the petitioner also admitted that he had indeed instituted a suit against Respondent No.1 for cancellation of documents, but the same was dismissed by the Court. The dismissal of his own cancellation suit further reinforces the validity of Respondent No.1's title and weakens the stand taken by the petitioner before this Court.

9. Fourthly, as regards the ground concerning the earlier petition C.P. No. S-115 of 2023, it emerges from the record is that the said petition was against an order passed by the Rent Controller on an application under Section 16(1) SRPO and was accompanied by a specific direction that the rent case itself be allowed to proceed through its normal course, including framing of issues, recording of evidence and disposal on merits. The learned appellate court was therefore not acting against any subsisting Order of this Court when it decided the FRA. The said ground does not disclose any jurisdictional error or illegality.

10. The finding of willful default is itself well-grounded and sufficient to sustain the ejectment order. It is settled law that after receiving notice of change of ownership, a tenant is required to pay rent due within 30 days of the receipt of such notice, and a failure to do so without a valid reason amounts to willful default, attracting liability to ejectment. The learned appellate Court relied upon 2000 CLC 1168 in support of this principle, which is well-founded, in addition where to, it was also held in 'Habib Bank Ltd. v. Sultan Ahmad' (2001 SCMR 679) and 'Tahir Hussain Malik v. Najma Rafi' (1995 SCMR 1407) that no sooner is a notice served upon the tenant under section 18 about the new owner of the property, or it was otherwise conveyed to him either in the judicial proceedings or by some other reliable source, the tenant was bound to accept the new owner as his landlord.

---

1. *'Iqbal v. Rabia Bibi'* (PLD 1991 SC 242), 2008 CLC 1134, *'Baboo Din v. Nasroo'* (1995 MLD 1460), *'Shahzada Gulzar v. Bashir Baig'* (1996 CLC 1293), *'Muhammad Yaqoob v. Mohsin Ali'* (1999 CLC

1173), '*Sae Khan Gul zad Gul v. Muhammad Ibrahim*' (1986 CLC 2577), '*Abdul Kareem Khan v. Mst. Zahida Khan*' (2008 YLR 2434)

11. The respondent has claimed that the demised shop is required for a personal *bona fide* need to start his own business, which statement on oath remained unshaken during his cross-examination and no evidence or material to the contrary was brought on record by the petitioner. It is well settled by now that on the issue of personal need, a statement on oath, if consistent with the application and not shaken in cross-examination or disapproved in rebuttal, is sufficient to prove that it is *bona fide*. Applying this test, the respondent has been consistent, and the evidence produced by him is not in conflict or inconsistent with the ejectment application. Where no evidence in rebuttal has been produced to shake the landlord's testimony, nor any infirmity was shown in the cross-examination to discredit it, the ratio settled in '*Tauhid Khanum v. Muhammad Shamshad*' (1980 SCMR 593) and '*Messrs F.K. Irani & Co. Vs. Begum Feroze*' (1996 SCMR 1178) is applicable. Further, no circumstance was available on record to show that the landlord's desire to use his own property was tainted with malice or any evil design. In the words of the Honourable Supreme Court, where a landlord's statement on oath had not been seriously challenged and the same, being consistent with the case pleaded by him, the same must be accepted on its face value and given due weight, as concluded in '*Mehdi Nasir Rizvi v. Muhammad Usman Siddiqui*' (2000 SCMR 1613). The respondent categorically stated that the demised premises is required for his personal bona fide use, which plea as set up in his Affidavit-in-Evidence, went uncontroverted and unshattered. Hence, on the ground of personal need, not a single piece of evidence or material could be brought on record to shake such claim, which stood proved beyond a shadow of doubt. Hence, such conclusion also stands concurred.

12. The learned appellate Court rightly held that the chain of title in favour of Respondent No.1 was clearly established through a series of registered documents. The learned Court also rightly held that the petitioner had himself admitted in his cross-examination before the learned Rent Controller that he had not specifically denied the tenancy relationship between him and the applicant upon the rented premises; that the petitioner's own suit for cancellation of Respondent No. 1's title documents had been dismissed by the civil court; and that the failure of the petitioner to pay rent after receiving notice of change of ownership amounted to willful default. Accordingly, the first rent appeal was allowed, and the rent case was rightly decided in favour of Respondent No. 1 on the grounds of both default and personal bona fide need.

13. Lastly, these are not proceedings in appeal, but Constitutional jurisdiction has been invoked under Article 199 of the Constitution, which can only be availed if it is established that the impugned Judgment suffers from some inherent lack of jurisdiction or some patent illegality. The Constitutional jurisdiction cannot be used as a substitute for a second appeal, as was held in '*Syed Mazhar Imam Rizvi v. Mst. Yasmin Bano and 2 others*' (2009 MLD 935); and '*Muhammad Hussain Munir v. Sikandar & others*' (PLD 1974 SC 139). In petitions arising out of rent matters under SRPO, it is also settled that this Court does not act as a Court of appeal, and reappraisal of evidence is uncalled for, even if some other conclusion was also possible based on evidence available on record. The

Constitutional jurisdiction of this Court under Article 199, in matters arising out of rent proceedings is well defined and well settled, being supervisory in nature, cannot be treated as a substitute for appeal and interference therein is warranted only when the impugned Order suffers from a jurisdictional error, or is based on a fundamental misreading of evidence, or discloses a patent legal error which results in miscarriage of justice. Mere re-assessment of evidence or substitution of this Court's view for that of the Courts below is not permissible within this jurisdiction, as was declared in '*Shamim Akhter v. State Life Insurance Corporation Ltd.*' (PLD 2005 Karachi 554).

14. Having gone through both the impugned decisions with care, I am clear in my mind that the learned appellate Court correctly identified and applied the relevant provisions of law with competent jurisdiction, after hearing the parties, considering the oral and documentary evidence, and proper findings were recorded. Those findings are based on the record and are supported by reasons. This Court, therefore, cannot disturb such findings since the Petitioner has not been able to point out any jurisdictional error or fundamental legal flaw. For these reasons, this petition is therefore dismissed, along with the pending application, with no order as to costs. Considering that a substantial period of four years has already passed since the filing of the Rent Application, the petitioner is directed to hand over peaceful vacant possession of the demised premises to the landlord within 30 days from the date of announcement of this Judgment.

15. Before parting with this judgement, I deem it appropriate to specifically record that the observations in this Judgement with respect to the sale agreement dated 05.01.2022 are tentative in nature, only for the purpose of this petition arising out of these rent proceedings, and the learned trial Court, in Civil Suit No.1166 of 2022, shall not get influenced by such observations while deciding the Suit on its own merits with respect to the said sale agreement.

With the above directions, the instant petition, along with the pending application, stands dismissed, with no Order as to costs.

**J U D G E**