

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.S-977 of 2025

Sadaruddin Noorali Vs. Muhammad Farooq and others

Constitution Petition No.S-978 of 2025

Sadaruddin Noorali Vs. Shah Faisal and others

Constitution Petition No.S-979 of 2025

Sadaruddin Noorali Vs. Danial and others

Constitution Petition No.S-980 of 2025

Sadaruddin Noorali Vs. Muhammad Farooq and others)

Date	Order with signature of Judge(s)
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For orders as to maintainability of petition.

Date of hearing and order: 07.08.2026.

Petitioner: Through M/s. M.R. Sethi & Abdul Razzaq,
Advocates

Respondents: Through Mr. Abdul Naeem A. Qureshi,
Advocate

ORDER

Nisar Ahmed Bhanbhro; J. I propose to decide the fate of the captioned petitions through this Common order. Though Rent Cases and FRAs were decided separately, but a plain reading of the impugned orders and

judgments reflected that all the cases were decided under the same principle of law.

2. The captioned petitions are directed against the judgments dated 11.08.2025 (**impugned judgments**) passed by Learned Xth Additional District Judge, Karachi (South) (**Appellate Court**) in First Rent Appeal (FRA) No 62 of 2025 (Re-Sadaruddin Noorali Vs. Danial and others), FRA No 63 of 2025 (Re-Sadaruddin Noorali Vs. Shah Faisal and others), FRA No 64 of 2025 (Re-Sadaruddin Noorali Vs. Muhammad Farooq and others) and FRA No 65 of 2025 (Re-Sadaruddin Noorali Vs. Muhammad Farooq and others) and the orders dated 03.03.2025 (**impugned orders**) passed by learned Vth Senior Civil Judge/Rent Controller, Karachi South (**Trial Court**) in Rent Case No 563 of 2023 (Re-Sadaruddin Noorali Vs. Danial and others), Rent Case 564 of 2023 (Re-Sadaruddin Noorali Vs. Shah Faisal and others), Rent Case No 565 of 2023 (Re-Sadaruddin Noorali Vs. Muhammad Farooq and others) and Rent Case No 566 of 2023 (Re-Sadaruddin Noorali Vs. Muhammad Farooq and others), whereby the rent application filed by the Petitioner (Landlord) was dismissed on an application filed by the Respondents.

3. It is the case of the petitioner that he was duly constituted Genral Attorney executed in his favor by the owners of the demised premises viz. Shops No 11,12,15, 17, 18, 19, 20, 21, 32, 38 and 41 situated at Barkat Plaza, Old Haji Camp, Siddiq Wahab Road near Gulistan Masjid Karachi, let out to the Respondents Muhammad Farooq, Danial and Shah Faisal. Petitioner vide power of attorney was authorized to collect the rent on behalf of owners. It is further case of Petitioner that for a period from July 2022 until the institution of rent case, the tenants (Respondent No 1 in all Petitions)

did not deposit the rent with him, as such committed default. Therefore, Petitioner filed ejectment application before Learned Trial Court. The Co-owners of demised premises filed an application under order I Rule 10 of the Code of Civil Procedure (C.P.C.) for impelading them as party, which was granted by Learned Trial Court and they were impleaded as Opponents No 2 to 7 in all the Rent Cases. The newly impleaded opponents filed an application under VII Rule 11 C.P.C. for rejection of the rent case, notices of the same were given to the Petitioner and after hearing the parties through respective Counsels, the applications were allowed vide impugned orders dated 03.03.2025 by Trial Court and FRAs filed against the orders were dismissed vide impugned judgments dated 11.08.2025, hence this Petition.

4. Learned counsel for the petitioner contended that the petitioner was duly constituted attorney of all the original owners and used to collect rent of tenement premises from Tenants (Respondent No 1 in all petitions). He contended that about one year prior to filing of the rent cases, the tenants stopped paying rent to the petitioner, whereupon he issued a legal notice to them but the same was not responded; hence petitioner instituted rent cases seeking eviction. He further contended that the respondents initially filed an application under Order VII rule 11 C.P.C., which was declined by Learned Trial Court. Thereafter, the co-owners filed an application under Order I Rule 10 CPC for seeking impleadment as party in the proceedings, which was allowed. Subsequently, the newly impleaded opponents filed another application under section VII Rule 11 C.P.C., which was heard and allowed by Learned Trial Court vide order dated 03.03.2025, by treating the same as an application under Section 19 of the Sindh Rent Premises Ordinance, 1979 (SRPO). Learned Counsel further submits that provisions

of Section 19 of SRPO can be invoked before the issuance of notices to the opposite party. He contended that Rent Controller the applications under order VII Rule C.P.C. were totally misconceived, however the same were treated as applications under Section 19 and Rent Cases were dismissed at the stage where the said provisions did not attracted (after issuance of notices to opponent). He contended that earlier decision on application under Order VII Rule 11 C.P.C. operated as an estoppel to re-adjudicate the same issue. He contended the impugned orders and judgments were void and without jurisdiction. He contended that petitioner was duly authorized attorney to collect the rent, the attorney in Petitioner's favor was not canceled or revoked and appointment of of new collector of rent without first revoking the attorney of petitioner was illegal, as such, the rent case instituted by him was competent and maintainable. He, therefore, prayed that the impugned orders and judgments may be set aside and the matter may be remanded back to the learned trial Court for decision on its merits.

5. On the other hand, Learned Counsel for Respondents No.2 to 7 controverting the submissions, contended that petitioner was attorney of the owners, but his power of attorney was subsequently revoked as he started residing abroad. The owners appointed a new attorney, who was duly authorized to collect the rent. He contended that Petitioner was in knowledge of appointment of new collector, in-spite he insisted the tenants to deposit rent with his sub-attorney. He contended that there was no default in payment of rent, as Tenants regularly paid rentals to the duly authorized person. He further submitted that after revocation of petitioner's power of attorney, he ceased to have any authority to collect rent and no longer fell within the definition of "Landlord" to institute a rent case. He contended that when owners of demised premises came to

know about institution of rent cases by Petitioner, they appeared before Trial Court and apprised the Court about factual position. He contended that petitioner had no locus standi to institute the rent case, which was rightly dismissed. He prayed to dismiss the petitions.

6. I have heard Learned Counsel for parties and perused the material available on record. From the careful scrutiny of record, it transpired that there was dispute over the collection of rent. Petitioner was authorized to collect the rent and perform other acts including but not limited to initiate ejectment proceedings with regard to the demised premises by the owners through separate General Power of Attorney in year 2005. The demised premises as per sale deed dated 26.05.1988 were purchased by Shahabuddin Barkatali, Karim Barkatali, Roshanali Habib and Bahadur Ali Habib Dharani in respective shares set out in the Registered Sale Deed. It is an admitted position on record, that petitioner was initially authorized to collect rentals, however, majority of the co-owners subsequently revoked Petitioner's authority and appointed a new Collector namely Mohammad Ali Morani to collect rent, who has been regularly receiving the rent from Tenants.

7. It is further the grievance of the Petitioner that General Power of Attorneys executed in his favor were never revoked, therefore, he was a lawful attorney to collect the rents and Tenants were under an obligation to pay rent to him. The power of attorney is a legal authorization that gives a designated person a written sanction and endorsement to stand in for or act on another's behalf in different events, businesses or legal matters having fiduciary relationship with the principal, being responsible to manage the affairs in terms of powers vested in the

indenture and execute all necessary legal or other business related and/or personal documents in line with this authority. The principal may allow an agent to handle a variety of activities including the execution of contracts, dealing with property affairs, overseeing and governing financial affairs and managing and supervising diverse or multiple accomplishments. The principal may revoke or cancel the power of attorney at any time unless it is with consideration. The grievance of the petitioner that power of attorney was not or any information was not conveyed to him regarding appointment of new collector, stood redressed when owners appeared before Rent Controller and apprised that they had appointed a new person for collecting rent, this was a sufficient notice and knowledge that Petitioner's authorization to collect rent stood withdrawn. Moreover, there is acknowledgment on the part of owners that Tenants are regularly paying rent to newly appointed collector. Owners of the demised premises by effecting appearance before by Learned Rent Controller have acknowledged the receipt of rentals, through newly appointed collector. In these circumstances, no case under Section 15 of SRPO seeking ejectment on the ground of default is made out. The real controversy revolves around the authority to collect rent but not the default. For the aforementioned reasons the notice in the petitions were issued subject to the maintainability.

8. The contention of Learned Counsel for the petitioner regarding attraction of section 19 of the SRPO after issuance of notice to opponent appears to be correct as after issuance of notices to the opponent side, recourse cannot be made to the said provision of law, in particular when learned trial court had declined the said relief by dismissing the application of Tenants. It transpired from record that Tenants had filed

applications under Order VII Rule 11 of C.P.C. read with section 19 of SRPO, which were declined vide order dated 16.01.2024 on the premise that notices were issued to opponent, hence provisions of section 19 of SRPO cannot be invoked at that stage. Legislature through section 19 has laid down procedure for trial of the rent applications before rent controller. For the sake of convenience it would be conducive to reproduce Section 19 of SRPO, which reads that:

19. Procedure.

(1) Where an application other than the application under section 14 has been made to the Controller under this Ordinance, he shall, unless the application is summarily dismissed by him for reasons to be recorded, issue a notice to the respondent to file written reply, if any, within such period not exceeding fifteen days of the receipt of the notice.

(2) Where on the day fixed in the notice for the respondent to file written reply, it is found that the notice has Compensation for vexatious eviction. in been served but the respondent has failed to file his reply without any reasonable excuse, the Controller may, proceed to make an ex parte order and after such order has been made the Controller shall have no power to rescind such order.

(3) Where the respondent has filed the written reply, the Controller shall proceed to receive evidence first of the applicant and his witnesses and then of the respondent and his witnesses.

(4) A party to a case under this Ordinance shall prove the evidence of his witness by producing the affidavit of such witness a copy of which shall simultaneously be supplied to the other party and such other party shall have the right to cross examine the witness on such affidavit and if the witness has been cross examined the party producing the witness may reexamine him.

(5) The Controller shall, instead of formally framing issues arising between the parties, state them briefly in the judgment and shall record findings on each such issue separately.

9. From the bare perusal of above provisions of law, it is deduced that where an application other than the application under section 14 has been

made to the Controller, he shall, unless the application is summarily dismissed by him for reasons to be recorded, issue a notice to the respondent to file written reply, if any, within such period not exceeding fifteen days of the receipt of the notice. In the present case, the rent case was filed on the plea of default falling within the scope of section 15. Rent Controller on receipt of application did not dismiss it summarily but issued notices to Respondents to file written reply. Once this exercise is undertaken, Rent Controller is precluded to pass any orders under section 19 of the SRPO.

10. The case of the Petitioner was totally on different footing. He sought ejectment on the ground of default by invoking the provisions of section 15 of SRPO. Sub Section (1) and (2) of Section 15 being relevant provisions for case in hand are reproduced below:

15. Application to Controller.

(1) Where a landlord seeks to evict the tenant otherwise than in accordance with section 14, he shall make such application to the Controller.

(2) The Controller shall, make as an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in the order, if he is satisfied that –

*(i) ******

(ii) the tenant has failed to pay rent in respect of the premises in his possession within fifteen days after the expiry of the period fixed by mutual agreement between the tenant and landlord for payment of the rent, or in the absence of such agreement, within the sixty days after the rent has become due for payment

Provided that where the application made by the landlord is on the sole ground mentioned in this clause and the tenant on the first day of hearing admits his liability to pay the rent claimed from him, the Controller shall, if he is satisfied that the tenant has not made such default on any previous occasion and the default is not exceeding six months, direct the tenant to pay all the rent claimed

- from him on or before the date to be fixed for the purpose and upon such payment, he shall reject the application;*
- (iii) the tenant has, without the written consent of the landlord –*
 - (a) handed-over the possession of the premises to some other person;*
 - (b) used the premises for the purpose other than that for which it was let out;*
 - (c) infringed the conditions on which the premises was let out;*
 - (iv) the tenant has committed such acts as are likely to impair the material value or utility of the premises;*
 - (v) the tenant has indulged in such activities as are causing nuisance to the neighbors;*
 - (vi) the premises is required by the landlord for reconstruction or erection of a new building at the site and the landlord has obtained necessary sanction for such reconstruction or erection from the authority competent under any law for the time being in force to give such sanction;*
 - (vii) the landlord requires the premises in good faith for his own occupation or use or for the occupation or use of his spouse or any of his children.*
- (3)*

11. It is crystal clear from the proviso to clause (ii) of sub section 2 of section 15 that when ejectment application is made by the landlord on the sole ground of default in payment of rent, and the tenant on the first day of hearing admits his liability to pay the rent claimed from him, the Controller shall, if he is satisfied that the tenant has not made such default on any previous occasion and the default is not exceeding six months, direct the tenant to pay all the rent claimed from him on or before the date to be fixed for the purpose and upon such payment, Controller shall reject the application. From the facts elucidated, herein above that the rent case was instituted on the sole ground of default in payment of rent, and on confirmation by the owners that no such default was committed, the further proceedings in the case were not warranted- under the law and rent case liable to be dismissed under the referred provisions. The Rent Cases were

rightly dismissed as Rent Controller was under an obligation to dismiss the case when default is made good, but in the present case there was no default, such an order is in resonance and in line with the intent and wisdom of legislation, as the word “shall dismiss” has been incorporated in the referred provision of law. Mere non-mention of this provision of law while deciding the rent case will not defeat the impugned orders which otherwise were well reasoned and based on legal premises.

12. The aforementioned discussion leads to an ineluctable conclusion that the tenants were not defaulters, as such the ejectment applications were rightly dismissed. I do not find any illegality or irregularity in the concurrent findings of two *fora* below, warranting interference by this Court under its extra ordinary writ jurisdiction to exercise the powers of judicial review conferred under article 199 of the Constitution of the Islamic Republic of Pakistan of 1973. Consequently, the captioned petitions fail and are accordingly dismissed with no order as to the costs.

Office is directed to place a signed copy of this order in connected petitions titled above.

JUDGE

Approved for reporting

Manthar Brohi