

Order Sheet  
IN THE HIGH COURT OF SINDH, KARACHI

**C.P. No.S-186 of 2025**

[ M/s. Farooque Watch and Co. v. Habib Ismail Lotia & another]

Petitioner: Through Mr. Samsam Ali Khan, Advocate.

Date of Hearing & order: 10.03.2025

**ORDER**

**ARSHAD HUSSAIN KHAN, J.** The petitioner through instant constitutional petition has challenged the judgment dated 23.12.2024 passed by XIIth Additional District & Sessions Judge, Karachi-South in FRA No.235/2024 whereby judgment dated 09.09.2024 passed by the VIIth Rent Controller, Karachi-South in Rent Case No.186/2022 was upheld and FRA was dismissed.

2. Brief facts of the case are that the respondents are owners/landlords of the building known as H.A Esmail Lotia building constructed on plot No.MR 2/49, Corner Murad Khan Road, Main M.A Jinnah Road, Karachi. The petitioner is tenant in respect of shop No.02 in the said building at a monthly rent of Rs.4,612/-. The respondents are doing combined business in the name of Habib Hardware Store in shop No.01 in the building in question and at present carrying on the business of Cutting Tools at large scale and measuring instruments at a small scale but the respondents have decided that both the respondents shall start their own individual businesses thereby the existing business of cutting tools at large scale and measuring instruments at a small scale by the name Habib Hardware Store shall be retained by the respondent No.01 while the respondent No.02 shall start the business of Hand Tools and Nut Bolts in the shop No.02 which in possession of the petitioner as well as the Shop No.03 which is in possession and tenancy of M/s Khas Trading in the same building as the said businesses cannot be run in a single shop for which more space will be required as such rented shop in question is required by the respondents for the personal need for the respondent No.02. Consequently, Rent Case No.186 of 2022 was filed by the respondents, which was allowed by VIIth Rent Controller, Karachi-South on the ground of personal bonafide need vide order dated 09.09.2024 with directions to the petitioner to handover the vacant and peaceful possession of the subject shop to the respondents within ninety days from the date of the order subject to payment of three months' rent accordingly. Said order was challenged by the petitioner by filing First Rent Appeal No.235 of 2024 before the XIIth Additional District Judge / Model Civil

Appellate Court, Karachi-South, which was dismissed and order of the Trial Court / Rent Controller was upheld vide impugned judgment dated 23.12.2024. The petitioner has challenged the concurrent findings of the Courts below in the present constitutional petition.

3. Learned counsel for the petitioner contends that impugned judgment and order are without any substance / lawful authority, as such, are not sustainable under the law; that both the Court below have failed to appreciate evidence, facts and arguments as well as law cited by the petitioner; that the rent case was filed by the respondents just to enhance the rent and subject premises was not required to them for their personal bonafide need but both the Courts below have failed to consider such aspect of the matter and granted ejectment application; that impugned judgment and order have been passed against the norms the Superior Courts as it is settled law that mere wish, convenience, whim or fancy of the landlord would not enough to show that landlord required the premises in good faith; that the landlord has failed to establish its case for personal bonafide need, as such, the impugned judgment and order are liable to be set-aside.

4. Heard learned counsel for the petitioner and perused the record carefully.

5. In the instant case, the two courts below have given concurrent findings against which the petitioner has not been able to bring on record any concrete material whereby such findings could be termed as perverse or having a jurisdictional defect or based on misreading of evidence. It is well settled that if no error of law or defect in the procedure has been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also well settled law that concurrent findings of the two courts below are not to be interfered with in the constitutional jurisdiction, unless extra ordinary circumstances are demonstrated, which in the present case is lacking.

6. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice<sup>1</sup>. It may also be observed that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided<sup>2</sup>, and is restricted inter alia to

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<sup>1</sup> Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

<sup>2</sup> Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413].

appreciate whether any manifest illegality is apparent from the order impugned. It is also well settled that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

7. It is also well settled principle of law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts, even if such findings are erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of mis-reading or non-reading of evidence or if the findings are based on evidence which may cause miscarriage of justice but it is not proper for this Court to disturb the findings of facts through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as substitute of revision or appeal. The Supreme Court of Pakistan in the case of Farhat Jabeen v. Muhammad Safdar and others [2011 SCMR 1073] has held as under:-

*"Heard. From the impugned judgment of the learned High Court, it is eminently clear that the evidence of the respondent side was only considered and was made the basis of setting aside the concurrent finding of facts recorded by the two courts of fact; whereas the evidence of the appellant was not adverted to at all, touched upon or taken into account, this is a serious` illegality committed by the High Court because it is settled rule by now that interference in the findings of facts concurrently arrived at by the courts, should not be lightly made, merely for the reason that another conclusion shall be possibly drawn, on the reappraisal of the evidence; rather interference is restricted to the cases of misreading and non-reading of material evidence which has bearing on the fate of the case."*

8. Besides above, the Supreme Court of Pakistan in the case of Muhammad Sharif v. Muhammad Afzal Sohail [PLD 1981 SC 246] while affirming dismissal of a constitution petition in a rent case arising from the conflicting findings of Rent Controller and the Additional District Judge has observed as follows:-

*"We are of the view that the petitioners were fully aware that a writ petition did not lie in these circumstances, but had filed it merely to gain time and delay their eviction from the shop. We have been noticing, of late, that notwithstanding the fact that the Legislature, in its wisdom has abolished the second appeal in cases under the West Pakistan Urban Rent Restriction Ordinance and has made the orders of the District Judge as final, yet the parties, probably after obtaining legal advice, have taken to filing writ petitions in the High Court against the final order passed by the appellate Court, merely to take another chance or to delay their eviction, hoping that the matter shall take considerable time to be disposed of or that in any case the High Court while dismissing their writ petition may be persuaded to allow further time for vacating the premises-in-question. The writ petitions are*

*argued before the High Court as if they are regular second appeals and we notice that the learned Judge of the High Court take great pains to re-appraise the evidence and to consider each and every contention raised by the petitioner's side before deciding the petition without realizing that, more often than not, such petitions are merely a devise to circumvent the amendment in the law and defeat the obvious intention of the Legislature, namely, a speedy determination of cases under the Urban Rent Restriction Ordinance. Such frivolous applications not only cause the poor litigants to incur necessary expenditure but also result in the waste of valuable public time and should, therefore, be discouraged by the High Court. It has been repeatedly held that a tribunal having jurisdiction to decide the matter is competent to decide it rightly or wrongly and the mere fact that another conclusion could be arrived at from the evidence does not make it a case for interference in the exercise of its constitutional jurisdiction."*

*[Emphasis Supplied]*

9. A perusal of the order passed by the Rent Controller shows that the eviction application was filed by respondents on the grounds of personal bonafide need and after examining the evidence of the parties, the ejectment application was allowed by the Rent Controller by holding that the respondent succeeded in proving their case on the ground of personal need and also that the evidence produced by them was not rebutted by the petitioner in its true perspective. The findings of the Rent Controller were upheld by the appellate Court. Section 15(2)(vii) of Sindh Rented Premises Ordinance, 1979 requires demonstration of elements such as (i) honesty of purpose and (ii) reasonableness, which in my humble opinion have been fully established by the respondents before the learned Rent Controller. Learned counsel for the petitioner has also not been able to point out any misreading and non-reading of the evidence by the Courts below.

10. In view of the above discussions and the law laid down by the Hon'ble Supreme Court of Pakistan, the present constitutional petition is dismissed *in limine* alongwith pending applications.

JUDGE