

**C.P. No.S-939 of 2023**

1. FOR ORDERS ON OFFICE OBJECTION AS AT 'A'
2. FOR HERING OF CMA NO.6798/23
3. FOR HEARING OF MAIN CASE

Molvi Iqbal Haider, advocate for Petitioner.  
Mr. Naeem Suleman, advocate for Respondent No.3  
Ms. Deeba Ali Jafferri, Asstt. Adv. Gen. Sindh

1. The Respondent No.3 filed Rent Case No.174/2022 before the learned Rent Controller bearing No.174/2022. The said Rent Application was allowed vide Judgment dated 24.11.2022. It is noted in para 4 of the said Judgment that the notices through all modes were issued to the Petitioner. However, none appeared and thereafter it is noted in the Judgment that affidavit in ex parte proof was filed by the Respondent No.3 and thereafter Ex-parte Judgment dated 24.11.2022 was passed in the above-mentioned rent case. Thereafter, Respondent No.3 preferred Execution Application No.04/2023 which was granted by order dated 24.08.2023. Thereafter, order of Police aid was issued on 12.09.2023 and the Petitioner was directed to vacate the tenement within 24 hours. It is claimed by the Petitioner that he came in knowledge of the proceedings after issuing of the Police order and filed the FRA mentioned above. Learned counsel for Petitioner states that he had no time to impugn the Judgment dated 24.11.2022 and due to paucity of time and

the urgency of the matter, he was only able to impugn the order, which was passed in execution proceedings.

2. I have heard counsel for Petitioner at-length. It is apparent that the Judgment dated 24.11.2022 was passed by the learned Rent Controller and the said order was not impugned by the counsel for Petitioner. What is even more apparent is that the order in which the execution proceedings were allowed was also not impugned by the Petitioner. The Petitioner in this regard in FRA No.248/2023 only impugned order for Police aide and the same was rightfully dismissed by the learned Appellate Court in limine.

3. It was open to the Petitioner to file an application for setting aside Ex-parte judgement. Moreover, there was no impediment for the Petitioner in filing an FRA, subject to limitation, against the judgment dated 24.11.2022 even after he filed FRA 248/2023.

4. A similar issued was raised in the case of **Muhammad Ain-ul-Haq versus Abdul Ali and another**<sup>1</sup> and the Honourable Supreme Court held as under:-

*“5. At this juncture, it is essential to point out that the petitioner has only challenged the execution proceedings rather than the original eviction order passed by the learned Rent Controller. As the eviction order itself has not been challenged, it remains legally valid and enforceable unless it has been set aside by any competent court of law. Hence, this court cannot address the grievances of the petitioner pertaining to the issue that eviction order passed by learned Rent Controller was illegal.*

*6. Upon perusal of the impugned order, it becomes apparent that the learned High Court has solely prescribed a timeframe for vacating the demised premises. It is a well-established principle that within the framework of execution proceedings, the courts are precluded from deliberating on the merits of the underlying case. Execution proceedings are confined to the implementation of judicial decisions and do not extend to an examination of the substantive issues that may have been previously adjudicated. Accordingly, the learned Rent Controller was duty bound to act solely in accordance with the law and to enforce the eviction order, without the latitude to scrutinize, question, or revisit the merits thereof. Similarly, the High Court was bound by the same constraints. Thus, the decisions rendered by the learned Rent Controller and the High Court in the execution proceedings are justified and legally apt.”*

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<sup>1</sup> 2024 SCMR 1767

5. In light of what has been held above, the instant petition is devoid of merits and the same is dismissed with no order as to costs. On the request of the learned counsel for the Petitioner the Petitioner is granted four weeks' time from today to vacant the tenement and shall hand over possession to the Respondent No.3 on or before 07.05.2025 through the Nazir of the executing court.

J U D G E

asim/pa