

**IN THE HIGH COURT OF SINDH, BENCH AT**  
**SUKKUR**

**C.P No. S – 240 of 2024**

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 01. For orders on office objections 'A'.
- 02. For hearing of main case.

Petitioner : Mst. Shamshad Begum d/o Abdur Rehman Khoso, through her attorney Yameen Ali Khoso in person.

Respondent No.1 : Shahid Ali s/o Jameel Ahmed Qureshi, through Mr. Abdul Mujeeb Shaikh, Advocate

Respondents No.2 to 4: Mr. Shaharyar Awan, Assistant A.G Sindh.

Date of hearing : **03.03.2025.**

Date of decision : **21.04.2025.**

**ORDER**

**Abdul Hamid Bhurgri, J.-** The petitioner has invoked jurisdiction of this Court by assailing the impugned Order dated 28.11.2024, whereby learned Additional District Judge-IV, Sukkur allowed Civil Revision No.100/2024 filed against her.

**2.** The petitioner had filed Rent Application No.01/2024 against the respondent No.1 before learned Rent Controller, wherein she averred that her father being an exclusive owner of property bearing C.S No.1539 (62-2), 1540 (65-7) and 1541 (44-4) total measuring (173-3) consisting of three separate portions, located at Takkar Mohalla near Allah Wali Masjid, taluka Rohri, district Sukkur had rented out to the father of respondent No.1 namely Jameel Ahmed Qureshi in year 1988 on monthly rent at the rate of Rs.1000/- per month of each portion for period of 11 months through oral rent agreement. After death of petitioner's father in year 1990, tenancy remained continued between Jameel Ahmed and legal heirs of Abdur Rehman father of the petitioner and after death of Jameel Ahmed, the respondent No.1 continued to be

tenant. It was further averred that in February, 2022, the respondent No.1 stopped monthly rent and thereby he became willful defaulter of rent of Rs.3,30,000/- and onward and the respondent No.1 failed to deposit arrears of rent albeit he was served with a legal notice by the petitioner, hence cause of action arose and the Rent Application was filed with following prayers:-

- (a) *To evict the opponent/tenant to handover the vacant possession of demised premises of property bearing C.S No.1539 (62-2), 1540 (65-7) and 1541 (44-4) total measuring (173-3) Ward-A which consisting on 03 separate portions, located at Takkar Mohalla near Allah Wali Masjid, taluka Rohri, district Sukkur.*
- (b) *To direct the opponent/tenant to pay the entire arrears of rent from February, 2022 up to date and onwards till receiving possession of the shop from the opponent, which approximately amount become of Rs.3,30,000/-.*
- (c) *To grant any other relief, which this Honourable Court may deems fit and proper under the circumstances of the case.*
- (d) *To award the costs of this rent application.*

**3.** It is evident from the record that the respondent No.1 did not contest the application before learned trial Court despite service against him was held good, however, matter was proceeded ex-parte and after recording evidence of petitioner and hearing her counsel, rent application was allowed vide Judgment dated 25.06.2024 whereby the respondent No.1 was directed to be evicted from the demised premises within 30 days.

**4.** Subsequently, the respondent No.1 filed an application under Section 12(2) CPC before Rent Controller-II, Sukkur, which after hearing was dismissed vide order dated 23.10.2024, which was assailed in Civil Revision Application No.100/2024, same was allowed vide impugned Order dated 28.11.2024, whereby order dated 23.10.2024 passed by learned Rent Controller-II, Sukkur was set aside and application under

Section 12(2) CPC was remanded back with directions to learned trial Court to frame the following issues:-

1. *Whether the respondent No.1, obtained order in Rent Application No.01/2024 dated 25.06.2024 and on Execution Application No.06/2024, dated 13.09.2024 by way of fraud and misrepresentation?*
2. *Whether there is relation between applicant and opponent as landlord and tenant and applicant is residing at demised premises mentioned in rent application, on rent?*
3. *Whether the Survey Number mentioned by opponents in Rent Application No.01/2024, is open plot or demised premises is constructed over there?*
4. *Whether the application u/s 12(2) CPC is maintainable as per law and what should the order be?*

*Learned trial court was further directed after giving opportunity to both parties to adduce their evidence and produce their respective documents, if any, then decide the application u/s 12(2) CPC on merits in accordance with law. The operation of judgment dated 25.06.2024 and order on execution application dated 13.09.2024 passed by learned trial court, shall be suspended till disposal of application u/s 12(2) CPC, in the interest of justice.*

**5.** Learned counsel for the petitioner argued that the impugned order is illegal and suffering from irregularities. He contended that the Rent Controller has no jurisdiction to entertain application under Section 12(2) CPC even otherwise no specific allegation of fraud and misrepresentation has been mentioned by the respondent No.1. He also contended that the Rent Controller has rightly dismissed the application. He added that the impugned order has been passed in haphazard manner without considering the legal position. In the end he prayed that this Court be pleased to set aside the impugned order dated 28.11.2024 by allowing this petition.

**6.** Conversely, counsel for the respondent No.1 argued that no relationship of tenant and landlord exists between the parties. He contended that neither rent agreement in writing has been produced by the petitioner nor did he produce any receipt in order to prove the relationship of landlord and tenant. He further argued that the Rent

Controller has no jurisdiction to decide such issue without deciding the issue of relationship between the parties. He supported the order of Revisional Court and prayed that the petition be dismissed.

**7.** Learned Assistant Advocate General has stated that though Government has no interest in the present petition he supports the impugned order and contended that the parties should be allowed to lead their evidence and matter be decided on merits.

**8.** I have heard the arguments advanced by the learned counsel representing the respective parties and have thoroughly examined the record placed before the Court.

**9.** This constitutional petition emanates from rent proceedings initiated by the petitioner before the learned Rent Controller-II, Sukkur, against respondent No.1 on the ground of default. The application was allowed ex parte vide order dated 25.06.2024. Thereafter, execution proceedings ensued, and a writ of possession was issued. At that juncture, respondent No.1 appeared and filed an application under Section 12(2) CPC, which was dismissed on 23.10.2024. Aggrieved thereby, respondent No.1 preferred Civil Revision No.100 of 2024 before the learned Additional District Judge-IV, Sukkur. The Civil Revision was allowed vide order dated 28.11.2024, hence this petition has been preferred by the petitioner with prayer to set aside the impugned order dated 28.11.2024 passed by Revisional Court.

**10.** It is admitted that no documentary evidence has been produced by the petitioner to establish the tenancy. The main contention raised by respondent No. 1 in his application under Section 12(2) CPC is that neither he nor his late father ever remained tenant of the petitioner or her predecessor. He further claimed that he is not in possession of the disputed premises in any capacity. Respondent No. 1 has essentially questioned the existence of relationship of landlord and tenant between the parties.

**11.** It is equally undisputed that the petitioner, despite asserting such relationship, has not placed on record any rent agreement or rent receipts to substantiate the tenancy. The petitioner admitted in her Rent

Application that no rent agreement was executed in writing, nor has any rent receipt been produced, despite claiming that the tenancy has existed since 1988. She claimed oral tenancy between the parties.

**12.** Learned counsel for the petitioner has argued that in light of Section 20 of the Sindh Rented Premises Ordinance, 1979, the application under Section 12(2) CPC is not maintainable. He further argued that no ground of fraud or misrepresentation had been pleaded in the said application.

**13.** The central issue that arises for adjudication is whether a relationship of landlord and tenant has been established on record in the proceedings culminating in the eviction order dated 25.06.2024 passed by the Rent Controller-II, Sukkur, against respondent No.1.

**14.** Under Section 5 of the Sindh Rented Premises Ordinance, 1979, a written agreement is required in order to show the relationship of landlord and tenant between the parties. For the sake of convenience section 5 is reproduced as under:-

*“S.5. Agreement between landlord and tenant.-(1) The agreement by which a landlord lets out any premises to a tenant shall be in written and if such agreement is not compulsorily registerable under any law for the time being in force, it shall be attested by, signed by, and sealed with the seal of, the Controller within whose jurisdiction the premises is situate or, any Civil Judge or First Class Magistrate.*

*(2) Where any agreement by which a landlord lets out any premises to a tenant is compulsorily registerable under any law for the time being in force, a certified copy of the registered deed and where the agreement is not so registerable, the original deed duly attested under subsection (1), shall be produced and accepted in proof of the relationship of the landlord and tenant:*

*Provided that nothing in this section shall affect any agreement between the landlord and tenant immediately before coming into force of this Ordinance.”*

From the bare perusal of language of section 5 of Sindh Rented Premises Ordinance, 1979, it reflects that the same is directory in nature and not mandatory, however, in the absence of written agreement the burden falls on party asserting the relationship to prove the same by

adducing compelling and unimpeachable evidence from which the Court can infer such relationship on the principle of the preponderance of probabilities. Reliance is placed on PLD 2003 Karachi 444, Hafeezuddin and 2 others v. Badaruddin and 2 others, wherein the Court has held as under:-

*“(iv) there can be verbal/oral tenancy also but in order to establish such tenancy an evidence of very high standard is required, from which the facts of tenancy is established on the principle of preponderance of probabilities;”*

In the above case law, the court held that the establishment of relationship in absence of written agreement must be supported by a high threshold of evidence. In the present matter, prima facie, the petitioner has not discharged that burden.

**15.** No rent agreement, receipt, or any other document has been produced by petitioner in order to establish a landlord-tenant relationship with the respondent No.1. The Rent Controller had allowed the application only on the ground that no rebuttal has been offered in response to the tenancy claim. However, respondent No. 1 in the application under Section 12(2) CPC had denied the existence of relationship of landlord-tenant between the parties and calls into question the maintainability of the entire proceedings.

**16.** Turning to Section 12(2) CPC, the maintainability of such application in rent proceedings hinges on specific limited grounds i.e. fraud, misrepresentation, or want of jurisdiction. Section 12(2) CPC is reproduced as under:-

*“12. Bar to further suit.---(2) where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit.”*

The bare reading of Section 12(2) reveals that an application under this provision is maintainable only upon three specific grounds mentioned supra.

**17.** The primary objection raised by the respondent No.1 in application under section 12(2) CPC is regarding jurisdiction of the Rent Controller as he categorically denied the existence of relationship of landlord and tenant between the parties. It is well settled law that question of jurisdiction has to be addressed by the Court first before proceeding the matter on the merits. Regarding objection of the petitioner on maintainability of the proceedings under section 12(2) CPC in rent application, in this regard this Court rely upon the case of Mst. Fehmida Begum v. Muhammad Khalid and another, 1992 SCMR 1908, wherein the Honourable Court has held as under:-

*“There cannot be any doubt that section 12(2), C.P.C, is in recognition of the well-settled principle that every Court or Tribunal has inherent jurisdiction to rescind or recall a void order passed by itself. In the Chief Settlement Commissioner v. Raja Muhammad Fazil Khan and others PLD 1975 SC 331, it was held that the preponderance of judicial authority supports the proposition that every authority, Tribunal or Court has power to even suo motu recall or review an order obtained from it by fraud, on the general principles that fraud vitiates the most solemn proceedings, and no party should be allowed to take advantage of his own fraud. On this principles in that case the Court held that there can be no distinction between the powers available in this behalf to a Court of general jurisdiction and a Court or Tribunal of a special or limited jurisdiction, for in either case the effect of fraud is the same and the duty to undo that effect must lie on the authority on which fraud is practiced. Therefore, on the rule that the equitable principles of C.P.C. can be invoked by the Rent Controller and that fraud vitiates the proceedings of a Court or a Tribunal, there can be no escape from the conclusion that the Rent Controller under the Rented Premises Ordinance has the power to set aside any order which has been secured by practicing fraud or misrepresentation upon him.”*

Furthermore, reliance is also placed in the case of Ismail v. Subedar Gul Inayat Shah, reported in PLD 1991 Supreme Court 997, the Honourable Court has held as under:-

*“Therefore, on the rule that the equitable principles of C.P.C, can be invoked by the Rent Controller and that fraud vitiates the proceedings of a Court or a Tribunal, there can be no escape from the conclusion that the Rent Controller under the Sindh Rented Premises ordinance has the power to set aside any order which has been secured by practicing fraud or misrepresentation upon him”.*

From the above case law, it is clear that bar under section 20 of the Sindh Rented Premises Ordinance, 1979 is not absolute and the Rent Controller in appropriate case may invoke the provisions of Code of Civil Procedure. The apex court further reiterate the jurisdiction defects in the rent proceedings may, in appropriate circumstances, warrant interference.

**18.** Since there is serious dispute regarding relationship between the parties and the petitioner has not produced any documentary evidence in order to prove the relationship of landlord and tenant between the parties, it is imperative for the Rent Controller to decide the application under section 12(2) CPC as per directions given by the learned Additional District Judge-IV, Sukkur and then proceed further.

**19.** In light of the facts and the case law discussed above, this Court finds no irregularity or infirmity in the impugned order dated 28.11.2024 passed by the learned Additional District Judge-IV, Sukkur, consequently, this Constitutional Petition being devoid of merits is dismissed accordingly.

**20.** However, the learned Rent Controller is directed to decide Application Under Section 12(2) CPC expeditiously. It is further clarified that the Rent Controller shall adjudicate the said application strictly in accordance with law, uninfluenced by any observation made herein.

*JUDGE*

ARBROHI