

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.S-06 of 2022

[Syed Naveed Ali Shah Banoori v. *Fatima Khan & others*]

D/o Matter

1. For orders on CMA No.5495/2025.
2. For hearing of CMA No.4027/2025.

Petitioner : Through Mr. Khalid Nawaz Khan Marwat,
Advocate

Respondent No.1 Through Attorney Abdul Mateen Qureshi.

Date of Hg. & order **25-08-2025**

ARSHAD HUSSAIN KHAN, J.- Through the instant Constitutional Petition, the petitioner has assailed the judgment dated **30.11.2021**, passed by the learned District Judge, Karachi [East] in First Rent Appeal No.112 of 2021, which was dismissed. Consequently, the order dated **21.09.2021** rendered by the learned Xth Rent Controller, Karachi [East] in Rent Case No.94 of 2019, allowing the ejectment application and directing the petitioner to hand over vacant and peaceful possession of the subject premises was upheld.

2. Brief facts giving rise to the present petition are that respondent No.1/applicant instituted a Rent Case on the grounds of default and personal bona fide need. The petitioner/opponent filed a written statement, wherein he denied the allegations and prayed for dismissal of the Rent Case. Subsequently, the evidence of respondent No.1/applicant was recorded through her attorney, who produced relevant documents in support of her case, and she was duly cross-examined by learned counsel for the petitioner/opponent. Thereafter, the matter was fixed for recording the evidence of the petitioner/opponent, but despite being afforded more than ten opportunities between 16.12.2020 and 15.07.2021, he failed to lead any evidence. Consequently, his evidence side was closed. The matter was then fixed for final arguments on 29.07.2021, on which date learned counsel for respondent No.1/applicant addressed arguments, while the partner of petitioner's counsel filed yet another adjournment application. The case was subsequently fixed on 09.08.2021, 24.08.2021, 08.09.2021, and 21.09.2021, but on each of these dates,

learned counsel for the petitioner/opponent failed to advance arguments. Having no other option, the learned Xth Rent Controller, Karachi [East], after hearing learned counsel for the respondent, allowed the ejectment application vide order dated 21.09.2021. The said order was assailed through First Rent Appeal before the learned District Judge, Karachi [East], which was dismissed through the impugned order. Hence, the present petition.

3. Record reflects that the instant petition was filed on **28.12.2021**, whereupon, after issuance of notice, a restraining order was granted in favour of the petitioner. Thereafter, from **07.03.2023** onwards, no one appeared on behalf of the petitioner to pursue the matter. Subsequently, pursuant to an intimation notice, learned counsel for the petitioner appeared on 17.02.2025 and submitted that the petitioner had not remained in his contact for a considerable period. Learned counsel expressed his intention to withdraw his Vakalatnama, whereupon he was directed to issue notice to his client/petitioner in the first instance. In compliance with the said directions, notice dated 20.02.2025 under Rule 50 of the Sindh Chief Court Rules was served upon the petitioner through TCS as well as WhatsApp. Counsel for the petitioner thereafter filed application [CMA No.1537/2025] along with annexures, including a copy of the notice, courier receipt, and screenshot of the WhatsApp message. A perusal of these annexures clearly shows that the notice was duly received by the petitioner in February 2025, however, despite receipt, he neither engaged another counsel nor appeared before this Court.

4. Record further reveals that the matter was also fixed on 11.04.2025, but due to non-appearance from the petitioner's side, the matter was adjourned. Eventually, on **29.04.2025**, the Application [CMA No.1537/2025] for withdrawal of Vakalatnama filed by Mr. Muhammad Ilyas Warraich, Advocate, was allowed. Consequently, owing to persistent non-prosecution, the present petition was dismissed along with all the pending applications. Thereafter, the petitioner, after a considerable delay, filed an application for recall of the order [CMA No.4027/2025] on 29.05.2025. Subsequently, another application under Order XXXIX Rules 1 and 2 read with Section 151 CPC [CMA

No.5495/2025] was filed on 15.08.2025. Both these applications are now being decided through this order.

5. Learned counsel for the petitioner contends that the petitioner neither received notice regarding withdrawal of *Vakalatnama* from his previous counsel nor was he served with the intimation notice issued by this Court. He further submits that the petitioner, being a cardiac and diabetic patient, was unable to travel from Kohat to Karachi owing to his medical complications. It is argued that the petitioner's non-appearance was neither willful nor deliberate, but was occasioned by his ill health. Learned counsel further asserts that the law favours adjudication of cases on merits and that mere technicalities ought not to obstruct the dispensation of justice. Lastly, it is contended that the petitioner shall suffer irreparable loss if the impugned order is not recalled/set aside and the petition is not restored to its original position.

6. Conversely, Attorney of the respondent No.1 has argued that no sufficient cause has been shown by the petitioner for restoration of the petition. He further submits that the conduct of the petitioner remained the same in the Rent Case as well as First Rent Appeal as he failed to proceed with the matter despite giving numerous opportunities. He lastly prays that both the listed applications may be dismissed as the petitioner does not deserve any leniency.

7. I have heard the arguments and perused the material available on record carefully.

The record further reveals that in the present petition also, after obtaining an ad-interim order in 2022, the petitioner did not remain in contact with his counsel. Resultantly, after issuance of notice, his counsel withdrew the vakalatnama. The contention of the petitioner that no notice was issued by his erstwhile counsel is contrary to the record. Documents filed by the said counsel along with his application for withdrawal of vakalatnama clearly demonstrate that the petitioner received the notice in the month of February 2025, whereas the petition was dismissed for non-prosecution on 29.04.2025.

The conduct of the petitioner, as discussed above, prima facie indicates that despite being granted ample opportunities to pursue his

case both before the trial Court and this Court, he consistently failed to avail himself of the same, resulting in adverse orders against him.

8. In the instant case, it is an admitted position that the petitioner is a tenant of respondent No.1, who requires the premises, inter alia, for her personal bonafide need. In such circumstances, the tenant cannot create any hurdle or refuse to hand over possession, as the right to use and enjoy the property is the prerogative of the landlord/owner. It is further noted that the respondent-landlady has been litigating since 2019 and, despite obtaining favorable decisions from the Rent Controller, the Appellate Court, and even this Court, she has not yet been able to derive the fruits of the judgments.

9. The conduct of the petitioner reflects utter negligence, as he remained careless not only during the proceedings before the learned trial court but also before this Court. It is a well-settled principle of law that “*the law assists the vigilant and not those who sleep over their rights*” this legal principle rooted in the Latin maxim Vigilantibus non dormientibus jura subveniunt. This means that individuals must act promptly and diligently to assert their legal rights, as unreasonable delays (known as laches or being time-barred) can lead to their claims being dismissed by courts. The purpose is to ensure the prompt resolution of legal matters, to prevent evidence from fading or becoming distorted, and to provide certainty and finality by protecting potential defendants from stale claims¹.

10. In the circumstances, the petitioner has utterly failed to make out any case warranting restoration of the instant petition. Consequently, both the listed applications, being devoid of merit and misconceived, are hereby dismissed.

JUDGE

Jamil*

¹ Akhtar Nasir Ahmed v. Province of Punjab through District Collector Gujrat and others [PLD 2024 SC 1268]; Muhammad Usman Siddiqui v. Mukaram Alam Siddiqui [2021 CLC 553] and Abid Hussain v. Secretary, Ministry of Defence, Government of Pakistan [2021 SCMR 645].