

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present:**

Mr. Justice Irfan Saadat Khan  
Mr. Justice Aqeel Ahmed Abbasi

**Civil Petition No.1032-K of 2025**

Against the judgment dated 28.07.2025 of the High Court of  
Sindh at Karachi passed in C.P. No.S-2602/2018

Dr. Muhammad Bashir Qasim through legal heirs ...Petitioner(s)

**Versus**

Gulzar Mehmood & 2 Others ...Respondent(s)

For the Petitioner(s): Raja Qasit Nawaz Khan, ASC

For the Respondent(s): N.R.

Date of Hearing: 01.09.2025

**JUDGMENT**

**Irfan Saadat Khan, J.-** This petition for leave to appeal has been filed impugning the order passed by the High Court dated 28.07.2025 in Constitution Petition No. S-2602 of 2018.

2. Briefly stated, the facts of the case are that the petitioners claim that their late father, Dr. Muhammad Bashir Qasim (hereinafter referred to as the "**deceased**"), was the lawful owner of property bearing Plot No. 64-1/B, Block-6, PECHS, Survey Sheet No. 35-P/1, measuring 416.47 square yards, comprising a ground floor plus two additional stories. The petitioners admit that they were tenants of Mst. Farida Bano (hereinafter referred to as "**MFB**"), the previous owner of the said property, from 1979, and were running a school under the name Greenfield Secondary School. However, in the year 1987-88, the deceased allegedly purchased the property from MFB through a sale agreement dated 10.11.1987, upon which an advance payment of Rs.50,000/- was made. The petitioners



further claim that the entire sale consideration was subsequently paid either through pay orders or direct deposits into MFB's bank account. They assert that, since 1987-88, they have remained in uninterrupted possession of the premises as its absolute owners. It is also claimed that MFB issued no-objection certificates (NOCs) required for various government departments, and that the petitioners had paid all the utility bills prior to the purported sale. It is further claimed that, after purchasing the property, the petitioners constructed two additional floors thereon; however, despite payment of the entire sale consideration, MFB did not transfer the property in their name.

3. It was also the claim of the petitioners that MFB executed a Power of Attorney in favour of one Muhammad Aslam (hereinafter referred to as "**MA**") on 13.11.1989, authorising him to effect transfer of the property in their favour. However, as no transfer ensued, the deceased instituted Suit No. 702/1989 for specific performance against MFB and MA before the High Court of Sindh. *Vide* interim order dated 09.06.1989, later confirmed on 17.12.1989, the High Court restrained MFB and MA from alienating, selling, or otherwise disposing of the subject property. Subsequently, on an application moved by MA dated 14.10.1991, the High Court modified its earlier restraining order, dated 17.12.1989, to the extent that MA was permitted to mortgage the property for the purpose of repaying a loan to Muslim Commercial Bank (MCB). Thereafter, MA instituted a counter-suit, i.e., Suit No. 373/1999, against the petitioners as well as MFB, for recovery and injunction. Both suits were clubbed together and transferred from the High Court to the Court of the Senior Civil Judge due to enhancement in pecuniary jurisdiction, and renumbered as Suit No. 1579/1996 (old No. 702/1989) and Suit No. 1526/1996 (old No. 373/1999), respectively. It is an admitted fact that both suits remain pending adjudication.



4. The present respondent, Gulzar Mehmood (hereinafter referred to as "**GM**"), claiming to have purchased the property from MA through a registered sale deed dated 21.07.2001, filed a rent case under Section 15 of the Sindh Rented Premises Ordinance, 1979 (hereinafter referred to as "**SRPO**"), along with an application under Section 16(1) of the SRPO, bearing R.C. No. 153/2003, against the deceased. GM asserted that he had lawfully purchased the property from MFB through her attorney MA, and that by operation of law, the petitioners became his tenants, liable to pay rent with effect from 2001. After examining the record and evidence produced, the learned V<sup>th</sup> Rent Controller, Karachi South, found that the applicant/GM (respondent before this Court), having acquired ownership through a registered sale deed dated 21.07.2001, was entitled to receive rent from the deceased (whose legal heirs are the present petitioners), who stood in a tenant-landlord relationship with him. Consequently, *vide* order dated 08.03.2008, the Rent Controller directed the petitioners to deposit arrears of rent from 21.07.2001 to March 2008 at the rate of Rs.25,000/- per month within one month, and to continue paying future monthly rent at the same rate (subject to a 10% annual increase) by the 10th of each month.

5. GM also filed an application under Section 16(2) of the SRPO for non-compliance with the tentative rent order dated 08.03.2008. This application was allowed by the Rent Controller *vide* order dated 29.01.2018, whereby the defence of the petitioners was struck off and they were directed to vacate and hand over peaceful possession of the premises within 30 days of the passing of the order. Aggrieved by the said order, the deceased filed First Rent Appeal (FRA) No. 85/2018 before the learned District Judge, Karachi South, who, *vide* judgment dated 14.11.2018, affirmed the Rent Controller's order and directed the petitioners to vacate the premises within 30 days from the announcement



of the judgment. The petitioners then approached the High Court through Constitution Petition No. S-2602/2018, which too was decided against the petitioners by categorially observing that since the petitioners have failed to comply with the order dated 08.03.2008 passed under Section 16(1) of the SRPO, which was tentative in nature, the default in the case has been established and therefore the two Courts below were justified in striking off the defence of the present petitioners under Section 16(2) of the SRPO and rightly directed the petitioners to vacate the premises in question. The High Court further observed that since some civil dispute is pending between the parties, with regard to the ownership of the property that may be considered by the appropriate Court of law in accordance with the law. It is against this judgment that the instant civil petition for leave to appeal has been filed.

6. Raja Qasit Nawaz Khan, ASC has appeared on behalf of the petitioners and stated that all the three Courts below have erred in deciding the matter against the petitioners, without properly appreciating the fact that the petitioners, though initially from 1979 to 1987, were the tenants of MFB but had become owners of the said property by virtue of a sale agreement dated 10.11.1987 when they purchased the said property from MFB, who fraudulently had not transferred the same in their names. According to him, there was no possibility of the petitioners being treated as tenants in respect of the said property or being required to pay any rent either to MFB or to GM. The learned counsel stated that the averments of the respondent GM that he was the landlord of the property are totally incorrect as the petitioners had already purchased the property from MFB way back in 1987, whereas the claim of GM that he has purchased the property in 2001 from MA, attorney of MFB, is uncalled for. According to him, the petitioners only came to know about GM allegedly purchasing the property from MFB through her attorney



MA when the rent case was filed by GM before the Rent Controller, against them. He stated that the present matter is a result of connivance among MFB, her attorney MA and GM with the sole intention to dispossess the present petitioners from the property.

7. The learned counsel stated that the Rent Controller as well as the Appellate Court have illegally fixed the rent at the rate of Rs.25000/- per month and directed the petitioners to pay the same from 2001, which action is wholly illegal, unjustified, and without lawful authority, and have illegally struck off the defence of the petitioners and passed the impugned ejectment orders for the alleged non-compliance of the tentative rent order passed under section 16(1) of the SRPO'79. He stressed that MFB, MA and GM have miserably failed to establish their ownership over the property. He stated that the NOC issued by MFB to the petitioners was an ample proof that the petitioners acquired the ownership rights. He submitted that production of sale agreement coupled with evidences of payment of sale consideration would prove the *bona fides* of the petitioners in acquiring the said property, which was not considered by the three *fora* below. According to him, since the petitioners were owners of the property; therefore, there was no question of paying any rent or being treated as a defaulter in respect of any alleged rent or arrears thereof. He, therefore, stated that the present petitioners vehemently deny the existence of relationship of landlord and tenant between the parties and prayed that the orders passed by the three Courts below, being illegal and uncalled for, may be set aside.

8. We have heard the learned counsel for the petitioners, gone through the impugned judgment and the law on the subject and have also examined the available record minutely.

9. At the very outset, we would like to state that the issue with regard to ownership, still pending adjudication, cannot be taken up or dilated.



upon. Reference in this regard may be made to the decision given in the case of **Umar Gul versus Dr. Hafiza Akhtar and others** (2025 SCMR 544) wherein it was observed as under:

“It is also a settled proposition of law that when a tenant disputes the very ownership of the landlord, the only recourse available with him is to file a civil suit.”

It is a settled proposition of law that matters concerning rent and ownership of the property have to be dealt with in accordance with the facts pertaining to those cases separately and independently. It is an admitted position on behalf of the petitioners that the issue with regard to the ownership of the property is pending adjudication; hence, any observation on the said issue would prejudice the case of both the parties.

10. Reverting back to the facts of the case at hand, it is an admitted position that the deceased was the tenant of MFB, who took the said premises on rent sometime in 1979. It is also an admitted position that the petitioners claim ownership of the property in dispute on the basis of the sale agreement dated 10.11.1987. The petitioners claim that a stay was operating in the suit, and during the pendency of the suit, the attorney of MFB, namely, MA, illegally sold out the property to GM. From the perusal of the record it reveals that suit No. 702/89 (renumbered as 1579/96) was dismissed on account of non-prosecution *vide* order dated 19.01.2001, which was then restored in the year 2006; however, in the meantime, the sale deed dated 21.07.2021 was executed in favour of the respondent by MFB through her attorney MA, meaning thereby that when the property was sold-out, there was no stay operating in the field, as claimed by the petitioners. Hence, on this aspect, we repel the argument of Raja Qasit Nawaz Khan, ASC for the petitioners that in spite of the stay granted by the Court MFB, through her attorney MA, has illegally sold out the property in question to GM, which aspect is found to be contrary of the record.



11. It is also an admitted position that GM, after purchasing the property in 2001, duly informed the deceased by complying with the provisions of Section 18 of the SRPO'79 by virtue of notice dated 30.12.2002, that since he has purchased the property and now is the owner of the same, hence the petitioners should now start paying rent to him. In response to this, no reply was furnished by the deceased. It is in this backdrop that an application under section 15 of the SRPO'79 was filed by GM along with an application under Section 16(1) of the SRPO'79 for payment of the rent/arrears etc. Perusal of the order of the Trial Court dated 08.03.2008 in R.C. No. 153/2003 reveals that when the said case was filed by the respondent, the present petitioners not only filed their written statements but also raised preliminary objections with regard to the maintainability of the said application, which were duly considered by the Trial Court. It is further noted that the Trial Court directed both the parties to lead their evidences and other material to prove their averments. It is evident from page 162 of the paper book that various documents were filed before the learned Trial Court which were duly examined, exhibited and considered by the said Court. The order of the Trial Court further reveals that witnesses were examined and after considering all these aspects the said Court came to the conclusion that the petitioners have admitted that prior to 1987 they were paying rent of the premises to MFB and hence, according to the Trial Court, since the respondent has stepped into the shoes of the previous landlord, hence, for all practical purposes, GM has to be considered as a new landlord and thus, there existed a relationship of landlord and tenant between the parties. The Trial Court, in our view, was therefore justified in passing a tentative rent order requiring the present petitioners to pay the rent as well as the arrears thereof. The Trial Court was justified in fixing the rent from 2001, i.e. the date of the purchase of the property, and to fix future



monthly rent in accordance with law after considering all aspects of the matter and other factors required in fixing a tentative rent. It would not be out of place to mention that against the order of the Trial Court dated 08.03.2008 a Constitution Petition was also filed by the present petitioners before the High Court bearing C.P. No. 144/2008 challenging the order of the Trial Court passed under Section 16(1) of SPRO'79 *vide* order dated 09.11.2017. It was then that an order on the application under section 16(2) of the SRPO'79 was passed by the Trial Court on 29.01.2018 by striking off the defence of the present petitioners. In this regard, the decision given in the case of **Syed Asghar Hussain versus Muhammad Owais and others** (2018 SCMR 1720) is relevant wherein a Division Bench of this Court observed "that by non-compliance with a tentative rent order the tenant loses his right of defence."

12. Perusal of the order of the Appellate Court dated 14.11.2018 also reveals that the aspect of whether the present petitioners are in occupation of the premises and whether there existed a relationship of landlord and tenant was categorically examined in detail and thereafter the said Court answered both the questions in the affirmative, clearly mentioning that the present petitioners are in occupation of the premises and that there exists a relationship of landlord and tenant between them. The Appellate Court has carefully examined the contentions of both parties and has also scrutinized the record and other documents before affirming the order of the Trial Court, thereby reaching to the conclusion that the respondent was able to prove his *bona fides* in respect of the matter and that default on the part of the petitioners has duly been established. Perusal of the record also reveals that the Appellate Court also quite rightly did not touch upon the aspect of the dispute of ownership of the property between the parties which, as stated above, was pending adjudication. Perusal of the record further reveals that



during the cross-examination, the petitioners admitted that they would pay the rent of the premises to the attorney of MFB, namely, MA, by fully admitting that they were tenants of the property; however, their stance changed when they submitted that, since they became owners of the property by virtue of a sale agreement, hence they are not required to pay any rent.

13. Perusal of the order of the High Court also demonstrates that the learned Single Judge quite rightly did not touch upon the issue of ownership of the property but, while affirming the decisions of the two Courts below, came to the conclusion that in respect of such like matters between the tenant and the landlord, the legal requirement is that a tenant must first vacate the said premises before raising any dispute regarding ownership, if any. The High Court, in our view, quite rightly relied upon the various decisions of this Court while affirming the concurrent findings recorded by the two Courts below.

14. In the case of **Ashiq Ali and another versus Mehar Elahi and 13 others** (2001 SCMR 130), it was observed by a three-member Bench of this Court that where an order under Section 16(1) of the SRPO'79 is passed by the Rent Controller and there is non-compliance with the same, the Rent Controller is duly authorized under Section 16(2) of the SRPO'79 to strike off the defence of the tenant for non-compliance with respect to the deposit of the rent as determined by the Court. In the instant matter, it is an admitted position that at no point in time the order passed by the Trial Court was complied with by the present petitioners. In the case of **Muhammad Iqbal Haider versus Ist ADJ, Karachi Central and others** (PLD 2018 SC 35), similar view was taken by a three-member Bench of this Court that "institution of civil suits for specific performance of agreement and cancellation of sale deed would



not justify non-compliance of the order passed by the Rent Controller under Section 16(1) of the SRPO 1979." Paragraph-7 of the said judgment is reproduced hereinbelow for ease of reference:

"7. We have heard the learned ASC for the petitioner and considered his arguments. The main thrust of the arguments advanced by him is that the relationship of landlord and tenant had been denied on the basis of the agreements to sell executed between Respondent No.4 and the mother of the petitioner. That being so, and the ownership of the property being in dispute, an order for payment of tentative rent under section 16(1) of the SRPO could not have been passed. Consequently, his defence could not have been struck off for non-compliance of the said order. However, we have noted that this aspect of the matter was fully addressed by this Court in the earlier round of litigation, The controversy relating to denial of relationship of landlord and tenant and pendency of litigation between the parties and the legality of the order for deposit of rent was examined and definitive findings were recorded by this Court in its judgment dated 09.06.2009 in Civil Petition No.1193 of 2008 in the following terms:-

4. We have heard the petitioner as well as the learned counsel for the contesting respondent No.2 at length and have also perused the available record. We find that the institution of two civil suits by the petitioner; one for specific performance of agreement and the other for cancellation of sale deed of the respondent No.2 per se, would not be sufficient to refuse compliance of an order of the Rent Controller under section 16(1) of the Ordinance pending final determination. Reliance can be placed on the cases of Nazir Ahmed v. Mst. Sardar Bibi and others (1989 SCMR 913), Mst. Bor Bibi v. Abdul Qadir (1996 SCMR 87), Waheedullah v. Mst. Rehana Nasim and others (2004 SCMR 1568), Haji Jumma Khan v. Haji Zarin Khan (PLD 1999 SC 1101), Khawaja Ammar Hussain v. Muhammad Shabbiruddin Khan (PLD 1986 Karachi 74), Habib Khan v. Haji Haroon-ur- Rasheed (1989 CLC 783); Gohar Ali Shah v. Shahzada Alam (2000 MLD 82), Iqbal and others v. Mst. Rabia Bibi and another (PLD 1991 SC 242) and Syed Imran Ahmed v. Bilal and another (Civil Appeal No.2230 of 2008 decided by this Court on 9.6.2009). Once the petitioner was prima facie, shown to be inducted as a tenant of the demised premises, he could not claim any exemption from payment of rent on account of institution of suits for specific performance and for cancellation of sale deed. Article 115 of the Qanun-e-Shahadat Order, 1984 lays down that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny that his landlord had a title to such property. The relationship of landlord and a tenant is not severed even if the execution of an agreement to sell is admitted. The petitioner was not absolved of his responsibility of compliance of order passed by the Rent Controller under the provisions of section 16 of the Ordinance for making of payment of



arrears and future rent. In our view, the impugned judgment of the High Court is plainly correct to which no exception can be taken.

5. For the foregoing reasons, we do not find any merit in this petition which is dismissed and leave to appeal is refused accordingly.”

15. Hence, if an order under Section 16(1) of the SRPO’79 is not complied with, it is a well-settled principle of law that the defence of the other side is struck off, being a mandatory requirement of law. In the instant matter, it is an admitted position that non-compliance with the order passed under Section 16(1) of the SRPO’79 was made by the petitioner, which prompted the Trial Court to pass an order under Section 16(2) of the SRPO’79, which, in our view, was rightly upheld by the Appellate Court as well as the High Court. In the case of **Bashir Ahmed versus Messrs. Roots School Network through Administrator/owner and others** (2011 SCMR 290) by a Division Bench of this Court, in paragraph No.6 of the judgment, it was observed as under:

“6. The issue in contention before us is confined to the question as to whether the admitted failure of the respondent to comply with the tentative rent order dated 7-2-2001, was merely technical as asserted by the respondent, or was willful, deliberate and contumacious as alleged by the, petitioner and so held by the learned Rent Controller and the learned appellate Court. Whether the default was technical or willful, is a question of fact. This question has to be answered on the basis of the record. In order to appreciate the respective positions of the two sides on this issue, it is necessary firstly to advert to the stance of the respondent/tenant taken in paragraph 2 of its objections to the application under section 16(2) of the SRPO. For ease of reference, the relevant extract from paragraph 2 of the objections, is reproduced as under:--

"The rent for these [five] months was in fact deposited by the opponent in Miscellaneous Rent Application No. 386 of 2000 instead of main case. By perusal of the deposit rent receipt and Nazir Report there is no wilful default in payment of rent except technical one, whereas the opponent's representative deposited the rent in Miscellaneous Application but not in the rent case. On inquiry the representative of the opponent namely Sheraz who used to deposit the rent in Court in every month informed that in this regard applicant/landlord contacted with him and requested him not to deposit the rent in main rent case and requested



him to deposit the same in Miscellaneous Rent Application No. 386 of 2000. The reasons so given by the representative of the opponent that applicant requested him not to deposit the rent in main case and same may be deposited in Miscellaneous Rent Application on the ground that it is difficult for the applicant to withdraw the rent in main case but it is easy for him to withdraw the rent from the Misc. Rent Application, so he did it on his instigation. However, he deposited the rent in time and committed no default as alleged by the applicant."

16. In the instant case, the default in respect of payment of tentative rent was found to be willful, deliberate and contumacious and, therefore, the three Courts below, in our view, were quite right in directing the petitioners to vacate the premises in question on the basis of non-compliance with the order passed by the Rent Controller, under Section 16(2) SRPO'79 and no exception to the said decisions could be taken in this regard. In the matters when default has been established, the only course available to the tenants either claiming ownership of the rented premises or denying the relationship of the landlord and tenant is to vacate the said premises and to pursue their civil suits, and upon favourable judgment by a competent court, they may claim the possession of the property afterwards. In the case of **Mst. Mussarrat Shaheen versus Mst. Verbeena Khan Afroz and others** (2024 SCMR 1796), *vide* paragraphs 8 and 9 of the judgment, passed by a three-member Bench of this Court, it was observed as under:

"8. With respect to the contention raised by the petitioner's counsel regarding the pending Civil Suit No. 303 of 2020, filed by the petitioner after filing of the rent case by the respondent No.1 in 2020, which seeks specific performance of the agreement dated 27.11.2009, it is essential to reaffirm a settled principle of law that a tenant cannot maintain occupancy of rented premises merely because he/she has initiated a suit for declaration. In instances where the tenant asserts ownership of the property, the legally mandated procedure requires the tenant to vacate the premises, pursue the civil suit, and, upon a favorable judgment by the competent court, regain possession of the property.

9. Reference may be made to the case of *Rehmatullah v. Ali Muhammad and another* (1983 SCMR 1064) wherein it has been held that:



" . It is settled principle of law that if a tenant denies the propriety rights of the landlord then he is bound to first of all deliver the possession of the premises in question and then to contest his propriety rights in the property and if ultimately he succeeds in getting relief from the court and decree is passed in his favour then he can enforce the same according to law with all its consequences ... "

Similarly, in the case of Muhammad Nisar v. Izhar Ahmed Shaikh and others (PLD 2014 SC 347), it has been ruled that:

"Per settled law in such circumstances when the tenant puts up a plea in an ejectment application that he had purchased the property then he has to file a suit for his remedies (which has been done) and vacate the premises and thereafter if he succeeds he would be entitled to take possession of the premises again ..."

[Emphasis added]

Recently, this court in the case of Nasir Khan v. Nadia Ali Butt and others (2024 SCMR 452), while delving on the similar proposition has observed that:

"...the inescapable conclusion is that a tenant remains a tenant, he cannot prolong his occupation by exercising his right of being subsequent purchaser unless so held by the court of competent jurisdiction. The reasons behind is that he has no status to justify his possession and if he denies the relationship of landlord and tenant he will be Known to be an illegal occupant.

12. It is trite law that a person cannot remain in occupation of rented premises simply because he asserts to be the owner of the rented premises and has instituted a suit for declaration in this regard."

17. In the instant matter, it is established that since ownership of the property has been claimed and disputed, and civil suits are pending, the only course available to the present petitioners is to pursue the said previous civil suits; they, however, have to vacate the premises in question. In case of any favourable judgment, they may claim the possession of the said property afterwards, but in the present circumstances, they cannot be allowed to continue in possession of the property. Reference in this regard may be made to the decision given



in the case of **Abdul Rasheed versus Maqbool Ahmed and others** (2011 SCMR 320) wherein a three-member Bench of this Court has observed as under:

“5. We have heard both the learned Advocates Supreme Court. It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails. In this regard reference can be made to Shameem Akhtar v. Muhammad Rashid (PLD 1989 SC 575), Mst. Azeemun Nisar Begum v. Mst. Rabia Bibi (PLD 1991 SC 242), Muhammad Rafique v. Messrs Habib Bank Ltd. (1994 SCMR 1012) and Mst. Bor Bibi v. Abdul Qadir (1996 SCMR 877). In so far as determination of the relationship of landlord and tenant is concerned, such enquiry by the Rent Controller is of a summary nature. Undoubtedly the premises were taken by the petitioner on rent from the respondent and according to the former he later on purchased the same which was denied by the latter. Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. In the tentative rent order the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exist.”

Similar view was taken by this Court in the case of **Muhammad Nisar versus Izhar Ahmed Shaikh and others** (PLD 2014 Supreme Court 347) wherein it was held as under:

“Per settled law in such circumstances when the tenant puts up a plea in an ejectment application that he had purchased the property then he has to file a suit for his remedies (which has been done) and vacate the premises and thereafter if he succeeds he would be entitled to take possession of the premises again.”

18. We, therefore, in view of the above facts and circumstances and the law laid down by this Court in the above-quoted judgments, have come to the conclusion that the present respondent has been successful in establishing the relationship of landlord and tenant



between the parties and that there is a default in complying with the tentative rent order and thus the three Courts below were justified in striking off the defence of the present petitioners and directing them to vacate the premises and to hand over the peaceful possession to the present respondent. We thus see no reason to interfere with the concurrent findings recorded by the three Courts below and, therefore, dismiss this petition being devoid of any merit and refuse to grant leave. No order as to costs.

Karachi  
01.09.2025  
Naseer

"Approved for reporting"