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JUDGMENT SHEET.

LAHORE HIGH COURT, RAWALPINDI BENCH RAWALPINDI. JUDICIAL DEPARTMENT

WRIT PETITION NO.1162 OF 2024

MUHAMMAD ZEESHAN ANJUM

Versus.

Learned **ADDITIONAL DISTRICT JUDGE** and others

JUDGMENT

Date of hearing:	**10.11.2025.**
Petitioner by:	Mr. Imran Shafiq, Advocate.
Respondents No.3 by:	Mr. Asad Abbasi, Advocate.
Respondent No.4 by:	Mr. Muhammad Shahid Kamal Khan, Advocate.

Mirza Viqas Rauf, J. This petition in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 originates from the judgment dated 18th April, 2024, whereby learned Additional District Judge, Rawalpindi, while dismissing the revision application, filed by the petitioner, affirmed the order dated 13th March, 2024, passed by learned Civil Judge Class-I, Rawalpindi.

2. Brief facts of the case, necessary for adjudication, are that the petitioner moved an application under Section 19 of the Punjab Rented Premises Act, 2009 (hereinafter referred to as "**Act, 2009**") before the learned Special Judge (Rent), Rawalpindi, seeking eviction of respondent No.3. The application was ex-parte allowed by way of order dated 08th December, 2023. In order to get the eviction order implemented, the petitioner filed an execution petition and during proceedings possession was delivered him. Feeling aggrieved, respondent No.4 (hereinafter referred to as "**respondent**") moved an application under Section 12(2) of the Code of Civil Procedure (V of 1908) (hereinafter referred to as

"**CPC**"), seeking annulment of the eviction order. The application was also accompanying an application for restoration of possession, which was allowed by way of order dated 13th March, 2024. Feeling dissatisfied, the petitioner though filed revision application under Section 115 of **CPC**, but it has been dismissed through the impugned judgment.

3. Learned counsel for the petitioner contended that the possession of the premises in question was handed over to the petitioner during the execution proceedings in a lawful manner. Maintained that the **respondent**, being aggrieved, moved an application under Section 12(2) of **CPC** and alongwith said application, an application for restoration of possession was also moved. Learned counsel submitted that said application, for all intents and purposes, was an application under Section 144 of **CPC** but it has been allowed in an illegal and unlawful manner. Learned counsel emphasized that Section 144 of **CPC** has wrongly been invoked and the impugned order as well as judgment though are concurrent but are patently illegal.

4. Conversely, learned counsel for the **respondent** contended that the application was moved while invoking Order XXI, Rule 101 of **CPC**. He submitted that the application was quite competent and it was rightly allowed. Learned counsel contended with vehemence that concurrent findings are unexceptionable.

5. Heard. Record perused.

6. The petitioner claiming himself to be landlord of the premises in question, moved an application under Section 19 of the **Act, 2009** against respondent No.3 before learned Special Judge (Rent), Rawalpindi. The application was allowed ex-parte by way of order dated 08th December, 2023. This followed the execution proceedings, during pendency of which, possession of the premises in question was delivered to the petitioner. The **respondent**, however, feeling dissatisfied moved an application under Section 12(2) of **CPC**, seeking annulment of the eviction order. He also moved an application for restoration of possession on the basis whereof, the learned Civil Judge proceeded to restore possession to the **respondent** by way of order dated 13th March, 2024, which was even affirmed by the learned revisional court through the impugned judgment.

7. There is no cavil to the fact that the application for restoration of possession was accompanying an application under Section 12(2) of **CPC** and it was apparently moved in terms of Section 144 of **CPC**. For ready reference, same is reproduced below: -

> **144. Application for restitution**. -- (1) Where and in so far as a decree is varied or reversed the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.
>
> (2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

From the bare perusal of above referred provision of law, it clearly manifests that if a decree is varied or reversed, on the basis whereof a party was divested from the property, the court of first instance on an application of such party can restore the possession and place the parties in the position which they would have occupied prior to passing of such decree. In the present case, the eviction order is still under scrutiny in terms of Section 12(2) of **CPC** and there was no occasion to invoke Section 144 of **CPC**. Guidance to this effect can be sought from *PARVAIZ, ETC. versus MUHAMMAD RAMZAN, ETC.* (**NLR 2009 Civil 317**), relevant excerpt from the same is reproduced:-

> 9. The concept of restitution is as old as the law itself. It becomes operative the very moment when the order under which a party to the litigation was deprived of his possession is varied, modified or set aside as it is ordained that the Court must remedy the injury or the wrong done to a party because of order of the Court. This section provides for procedure therefore, while the power to order restitution is inherent in Court, and should be exercised whenever justice demands. It is not a case of restoration of possession but of restitution of possession because order of dispossession of DDO (R) has been set aside by EDO (R) declaring the same to be illegal and without jurisdiction.

8. So far contention of learned counsel for the **respondent** that the application was in fact in terms of Rule 101 of Order XXI of **CPC**; suffice

to observe that the **respondent** may have several remedies, including the remedy provide under the Rule, *ibid*, but apparently, he opted to avail remedy under Section 12(2) of **CPC** and moved the miscellaneous application as part of said proceedings which for all intents and purposes was an application under Section 144 of **CPC** and was not proceedable in view of observations recorded, hereinabove, on account of clear and unequivocal mandate of Section 144 of **CPC**. Even otherwise, in view of settled principle of law that interim relief cannot be extended to a party in the form of final relief, learned Civil Judge Class-I, Rawalpindi, while allowing the application has transgressed his powers.

9. Adverting to the stance of the **respondent** that the application was moved by invoking Order XXI, Rule 101 of **CPC**, it is observed, at the cost of repetition, that the **respondent** may have several remedies but on account of *"doctrine of election"*, he has to choose one of said remedies. It is trite law that the moment a party to lis intends to commence any legal proceeding to enforce any right and or invoke a remedy to set right a wrong or to vindicate an injury, he had to elect and or choose from amongst host of actions or remedies available under the law. The choice to initiate and pursue one out of host of available concurrent or co-existent proceedings/actions or remedy from a forum of competent jurisdiction vested with that party but when once choice was exercised and election was made then such party is precluded from launching another proceeding to seek a relief or remedy contrary to what would be claimed and or achieved by adopting other proceeding/action and or remedy, which in legal parlance is recognized as *"doctrine of election"*. The edifice of *"doctrine of election"* is structured and founded by the courts of law from the well-recognized principles of waiver and or abandonment of a known right, claim, privilege or relief as contained in Order II Rule 2 of the **CPC,** principles of estoppel as embodied in Article 114 of the Qanun-e-Shahadat Order, 1984 and principles of *res judicata* as enshrined in Section 11 of the **CPC.** To understand the object and scope of *"doctrine of election"* one can seek guidance from the principles laid down by the Supreme Court of Pakistan in the case of *TRADING CORPORATION OF PAKISTAN versus*

DEVAN SUGAR MILLS LIMITED and others **(PLD 2018 Supreme Court 828)** wherein the Supreme Court of Pakistan has very elaborately outlined the scope of *"doctrine of election"* in the following words :-

> **"**8……..The moment suitor intends to commence any legal action to enforce any right and or invoke a remedy to set right a wrong or to vindicate an injury, he has to elect and or choose from amongst host of actions or remedies available under the law. The choice to initiate and pursue one out of host of available concurrent or co-existent proceeding/ actions or remedy from a forum of competent jurisdiction vest with the suitor. Once choice is exercised and election is made then a suitor is prohibited from launching another proceeding to seek a relief or remedy contrary to what could be claimed and or achieved by adopting other proceeding/action and or remedy, which in legal parlance is recognized as *doctrine of election,* which doctrine is culled by the courts of law from the well-recognized principles of *waiver and or abandonment of a known right, claim, privilege or relief* as contained in Order II, rule (2) C.P.C., principles of estoppel as embodied in Article 114 of the Qanun-e-Shahadat Order 1984 and principles of *res-judicata* as articulated in section 11, C.P.C. and its explanations. *Doctrine of election* apply both to the original proceedings/action as well to defences and so also to challenge the outcome on culmination of such original proceedings/ action, in the form of order or judgment/decree (for illustration it may be noted that multiple remedies are available against possible outcome in the form of an order/judgment/decree etc. emanating from proceedings of civil nature, which could be challenged/defended under Order IX, rule 13 (if proceedings are ex-parte), section 47 (objection to execution), section 114 (by way of review of an order), section 115 (revision), under Order XXI, rules 99 to 103 C.P.C. and section 96 C.P.C. (appeal against the order/judgment) etc. Though there is no bar to concurrently invoke more than one remedy at the same time against an ex-parte order/judgment. However, once election or choice from amongst two or more available remedy is made and exhausted, judgment debtor cannot ordinarily be permitted subsequently to venture into other concurrently or coexisting available remedies. In a situation where an application under Order IX, rule 13, C.P.C. and also an application under section 12(2), C.P.C. seeking setting aside of an ex-parte judgment before the same Court and so also an appeal is filed against an ex-parte judgment before higher forum, all aimed at seeking substantially similar if not identical relief of annulment or setting aside of ex-parte order/judgment. Court generally gives such suitor choice to elect one of the many remedies concurrently invoked against one and same ex-parte order/judgment, as multiple and simultaneous proceedings may be hit by principle of *res-subjudice* (section 10, C.P.C.) and or where one of the proceeding is taken to its logical conclusion then other pending proceeding for the similar relief may be hit by principles of res-judicata. Giving choice to elect remedy from amongst several coexistent and or concurrent remedies does not frustrate or deny right of a person to choose any remedy, which best suits under the

given circumstances but to prevent recourse to multiple or successive redressal of a singular wrong or impugned action before the competent forum/court of original and or appellate jurisdiction, such rule of prudence has been evolved by courts of law to curb multiplicity of proceedings. As long as a party does not avail of the remedy before a Court of competent jurisdiction all such remedies remain open to be invoked. Once the election is made then the party generally, cannot be allowed to hop over and shop for one after another coexistent remedies. In an illustrative case this court in the case of *Mst.Fehmida Begum v. Muhammad Khalid and others* (1992 SCMR 1908) encapsulated the doctrine of election as follows:

> *"However, it is one thing to concede a power to the statutory forum to recall an order obtained from it by fraud, but another to hold that such power of adjudication or jurisdiction is exclusive so as to hold that a suit filed in a civil Court of general jurisdiction is barred. I am therefore in agreement with my brother that a stranger to the proceedings, in a case of this nature has two remedies open to him. He can either go to the special forum with an application to recall or review the order, or file a separate suit. Once he acts to invoke either of the remedies, he will, on the general principles to avoid a conflict of decisions, ultimately before the higher appellate forums, be deemed to have given up and forfeited his right to the other remedy, unless as held in Mir Salah-ud-Din v. Qazi Zaheer-ud-Din PLD 1988 SC 221, the order passed by the hierarchy of forums under the Sindh Rented Premises Ordinance, leaves scope for approaching the Civil Court."*

9. In the case of *Behar State Co-operative Marketing Union Ltd. v. Uma Shankar Sharan and another* [(1992) 4 Supreme Court Cases 196] Indian Supreme Court confronted with somewhat identical situation as to availability of plurality of remedies under a statute in paragraph No.6 at page 199 concluded as follows:

> "6. Validity of plural remedies, if available under the law, cannot be doubted. If any standard book on the subject is examined, it will be found that the debate is directed to the application of the principle of election, where two or more remedies are available to a person. Even if the two remedies happen to be inconsistent, they continue for the person concerned to choose from, until he elects one of them, commencing an action accordingly."

Reference to the above effect can also be made to *JUBILEE GENERAL INSURANCE CO. LTD., KARACHI versus RAVI STEEL COMPANY, LAHORE* **(PLD 2020 Supreme Court 324).**

10. There is no cavil that normally this Court restrains itself to interfere with the concurrent findings of the courts below in exercise of constitutional jurisdiction but this is not an inflexible and absolute rule. The constitutional jurisdiction is meant to curb any illegality or perversity

resulting into abuse of process of law. Though there are concurrent findings but in the light of discussion, noted hereinabove, it can safely be inferred that same are tainted with patent illegalities.

11. For the foregoing reasons, instant petition is **allowed** and findings of the learned Additional District Judge as well as learned Civil Judge Class-I, Rawalpindi, rendered through judgment dated 18th April, 2024 and order dated 13th March, 2024, are **set-aside**. No order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

Sajjad

APPROVED FOR REPORTING

JUDGE