

ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Civil Revision No. 344/2018

Muhammad Afzal Mirza
Versus
Mohsin.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(08)	08.10.2020	Hafiz Hifz-ur-Rehman Syed, Advocate for Petitioner. Rana Rashid Mehmood, Advocate for applicant in C.M. No. 477/2019. Mohsin/Respondent in Person.

Through this Civil Revision, the petitioner / Muhammad Afzal Mirza has assailed the judgment and decree dated 27.09.2018, passed by Additional District & Sessions Judge-West, Islamabad, whereby, the suit filed by the petitioner has been dismissed.

02. Brief facts of the case referred in the instant Civil Revision are that the petitioner Muhammad Afzal Mirza has filed suit for possession and recovery of rent and permanent injunction against respondent / Mohsin regarding property comprising of 05-Marla bearing Khasra No. 77/2, situated in the Revenue Estate of Mouza Badia Qadir Bukhsh comprising of double story constructed building with six shops situated on the western side of Sector G-11 on service road, Islamabad, which was allegedly given to respondent on rent in January 2013 against monthly rent of Rs. 7000/- on verbal basis, whereafter, respondent has established his business of Net Café and Royal Classic in the said shops and subsequently failed to pay the rent, as result whereof, instant suit has been filed.

03. After recording of evidence the suit was decreed vide judgment and decree dated 27.03.2018, but same was set-aside by the appellate court through judgment and decree dated 27.09.2018, mainly on the ground that relationship between tenant and landlord has not been proved by the petitioner, simultaneously, the appellate

court has also dismissed the application filed by Mirza Muhammad Saleem, in terms of Order 1 Rule 10 of CPC, having become infructuous.

04. Learned counsel for petitioner contends that the property in question is situated in the area of Mouza Badia Qadir Bukhsh which is an acquired property by the CDA but the whole building and constructed portions are still regulated by the co-owners without having any record and as such the appellate court has not appreciated the position available on record.

05. Conversely, respondent / Mohsin put appearance in person and contends that he was an employee in the business referred by the petitioner and as such he was not a tenant in the said premises rather the business was owned by Muhammad Saleem Mirza and his brother who were necessary party to be impleaded.

06. On the other hand, an application (C.M. No. 477/2018) has separately been filed for impleadment in the instant Civil Revision by Mirza Muhammad Saleem with the claim that he is necessary party to be impleaded being a co-owner in the said plaza. At this juncture, all the parties are in agreement that respondent/applicant is necessary party to be impleaded, therefore, C.M. 477/2018 is allowed and Muhammad Saleem Mirza s/o Muhammad Zaman is considered to be necessary party in the main suit but surprisingly this aspect was not considered by the court below at the relevant time even the application filed by the said applicant was earlier dismissed by the learned appellate Court having being declared infructuous.

07. Keeping in view the above position, it is trite law that necessary or proper party in the proceeding would be those who are relevant and interested in the suit in question and without their presence suit could not be decided on merit. It is also settled principle that when no effective adjudication can take place or

decree be passed, proceeding so conducted is illegal. Reliance is placed upon PLD 2011 Karachi 281, 246, 605 PLD 1982 Supreme Court 167, similar view has also been rendered in recent announcement reported Judgment as 2020 SCMR 214 , whereby , it is held that “The reason is that when anyone alleges a connivance of the said officials of Revenue Department with the Defendants of the Suit for getting a mutation attested, without participation of the said party, no valid adjudication can be carried out against the said party and no finding can be recorded against them in their absence of connivance with the Defendants.

08. Keeping in view the above situation, instant civil revision is allowed, hence, judgment in decree dated 27.09.2018 passed by Additional District & Sessions Judge-West, Islamabad as well as judgment and decree dated 27.03.2018 passed by Civil Judge 1st Class West, Islamabad are hereby set-aside. The matter is remanded to Civil Court, whereby, the main impleaded respondent (Muhammad Saleem Mirza s/o Muhammad Zaman be impleaded as defendant in the main suit through the amended plaint. Similarly, the legal heirs of Muhammad Afzal Mirza who died during pendency of the case may also be impleaded. Newly impleaded respondent / defendant is directed to submit the written statement within 30 days before the learned trial Court seized the matter and it is expected from the trial court to conclude the matter on or before 30.06.2021 by all means in accordance with law, under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE