

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 387/2019.

Nasir Ali Jandan

Versus

Federation of Pakistan through Secretary M/o Housing and Works, Islamabad, etc.

Petitioner by: Syed Shajjar Abbas Hamdani, Advocate.

Respondents by: Barrister M. Mumtaz Ali, AAG.
Mr. Abid Mehmood, Advocate.
Mohsin Pasha, Joint Estate Officer.

Date of Decision: 05.03.2020.

MOHSIN AKHTAR KAYANI, J.– Through this Civil Revision, the petitioner has assailed the order dated 16.09.2019, passed by learned Civil Judge/Rent Controller (West), Islamabad, whereby application U/O XXXIX Rule 1 & 2 CPC filed by petitioner was dismissed. The petitioner has also assailed the judgment & decree dated 03.10.2019, passed by learned Additional District Judge (West), Islamabad, whereby appeal against order dated 16.09.2019 filed by petitioner was also dismissed.

2. Learned counsel for the petitioner contends that petitioner is employee of Pakistan Council of Scientific and Industrial Research (PCSIR), Ministry of Science and Technology, Government of Pakistan and was transferred to Ministry of Religious Affairs and as such he is entitled to retain the Government accommodation; that

allotment letter has been issued on 08.02.2013 by the Estate office and as such petitioner is regularly paying the rent and no default has been made in this regard, however, when he has been repatriated to PCSIR process has been initiated, which has been assailed by him before the Civil Court through suit for declaration, mandatory and permanent injunction, whereby his application U/O XXXIX Rule 1 & 2 CPC has been dismissed concurrently without considering the fact that petitioner is presently on deputation and he is deemed to be eligible allottee of the suit quarter which could not be allotted to any other individual including respondent No.3 and the question of eligibility is yet to be adjudicated by the trial Court; that petitioner could not be deprived of his legitimate allotment unless the trial Court determines the test of eligibility and evidence.

3. Conversely, learned AAG contends that two suits are pending with learned trial Court, whereby one suit has been filed by the petitioner and other suit has been filed by respondent No.3 and both are claiming the rights in the suit quarter; that petitioner is an employee of PCSIR and as such he could not be accommodated against the post of civil servant against deputation, even he is not entitled to retain the Government accommodation under any circumstances; that petitioner himself appeared before the Court on 11.06.2019 and recorded his categorical stance, whereby he sought time to vacate the premises in question but later on he again filed a civil suit on similar cause of action which is not permissible under the law and on this score his application U/O XXXIX Rule 1 & 2 CPC was dismissed.

4. Learned counsel for respondent No.3 contends that respondent No.3 is lawful allottee of suit accommodation vide allotment letter dated 27.05.2019 in accordance with Rule 12 of the Accommodation Allocation Rules, 2002 and as such the instant civil revision is not competent.

5. Arguments heard, record perused.

6. Perusal of record reveals that suit quarter i.e. House No.192-E, G-6/2, Islamabad was previously allotted to Fir Bakhsh Jandaan, who retired on 03.03.2012 and quarter was allotted to petitioner by respondents No.1 & 2 under Rule 15(2)(b) of Accommodation Allocation Rules, 2002 as he was working in Ministry of Religious Affairs on vacant post of Data Processing Assistant (BPS-16) on 14.03.2012, however, petitioner was repatriated to his parent department on 15.04.2014 i.e. PCSIR, which is non-entitled department and he made a request to the Estate office as well as Ministry of Housing & Works for retention of said quarter, which was allotted by the respondents department and the same was expired on 30.04.2019, where-after he filed a civil suit to retain the suit accommodation but during the course of arguments in the said suit titled Nasir Ali Vs. FoP, etc. petitioner requested the trial Court to grant time for vacation of the suit accommodation, which was allowed till 11.09.2019 subject to deposit of rent of three months vide judgment & decree dated 11.06.2019, however, later on petitioner again filed a second suit on 10.08.2019 with the contention that allotment letter issued in the name of Haider Munawar Cheema/respondent No.3 is illegal. During the course of said proceedings request for restraining order was

dismissed vide order dated 16.09.2019, even the first appeal was dismissed by the Appellate Court.

7. I have gone through each and every order of the trial Court as well as orders passed in the previous round and as such the question of irreparable loss and balance of convenience do not lean in favour of the petitioner, nor he could demonstrate from the record to justify his retention of accommodation beyond the permissible period of 05 years which has expired on 30.04.2019 as per his own version.

8. It is not denied that cross suit titled Nasir Ali Jandan Vs. FoP and Haider Munawar Cheema Vs. FoP are pending with the learned trial Court and fixed for recording of evidence, therefore, at this stage the minimum requirement of Order XXXIX CPC is not visible in favour of petitioner. Both the courts below have appreciated this aspect and petitioner has failed to provide any legal justification in his favour especially when his earlier suit has been dismissed on his own request to vacate the subject premises on or before 11.09.2019, hence he is not entitled for any discretionary relief. Therefore, instant civil revision is hereby dismissed

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid