

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

C.R. No.127/2019.

**Federation of Pakistan through Secretary, Ministry of Housing &
Works, Islamabad etc.**

Vs.

Mst. Tasleem Bibi etc.

Petitioner by: Barrister Mumtaz Ali, AAG.
Muhammad Mohsin Pasha, Joint
Estate Officer.

Respondent No.1 by: Mr. Babar Saeed Butt, Advocate.

Date of Decision: 21.02.2020.

MOHSIN AKHTAR KAYANI, J:- Through this civil revision petition, Federation of Pakistan has assailed the order dated 27.10.2018, passed by learned Civil Judge 1st Class (West) Islamabad, whereby suit filed by respondent No.1 was disposed of in favour of respondent. The petitioner has also assailed the order dated 20.12.2018, passed by learned District Judge (West), Islamabad, whereby appeal filed by the petitioner against the order dated 27.10.2018 was dismissed.

2. Learned AAG contends that suit quarter No.35/6-D (New 77/6-D), St.32, F-6/1, Islamabad was allotted to Irfan ud Din Qureshi, who was civil servant in BPS-16 in Collectorate of Customs vide allotment letter dated 14.10.2005 and he died during service at Karachi on 18.06.2013 as per notification dated 08.02.2013 issued by Federal Board of Revenue, Government of Pakistan and his mother/respondent No.1 Mst. Tasleem Bibi filed suit for declaration, mandatory and permanent injunction seeking the relief that she is entitled to retain the allotted accommodation till age of superannuation of her son i.e. 20.12.2030 under Prime Minister Assistance Package for the families of the employees, who die in service; that Estate Office filed written statement and took categorical stance that deceased son of respondent No.1 died on 18.06.2013 and the retention of government accommodation under Rule 15(A) of Accommodation Allocation Rules, 2002 is

initially for one year and under Prime Minister Assistance Package dated 13.06.2006 she was allowed to retain accommodation for maximum five years up to 17.06.2018 as such the accommodation cannot be retained beyond the said period; that stance taken by the Estate Office before learned Trial Court has not been appreciated and learned Trial Court decided the matter without framing of issues and recording of evidence vide impugned order dated 27.10.2018 and even appeal filed by the petitioner before learned District Judge was dismissed being time barred without appreciating legal question.

3. Conversely, learned counsel for respondent No.1 contends that respondent No.1 was entitled to retain government accommodation initially under Prime Minister Assistance Package for five years but later on Prime Minister Assistance Package was amended on 20.10.2014 with retrospective effect i.e. 15.06.2013 in the existing assistance package for the families of government servants, who die in service, whereby the families of deceased civil servants can retain the accommodation till the age of superannuation or for five years, whichever is earlier and as such the Courts below have rightly appreciated this aspect in proper manner; that appeal filed by the petitioner before learned District Judge Islamabad was time barred and the same was rightly dismissed.

4. I have heard the arguments and perused the record.

5. Perusal of record reveals that suit accommodation i.e. House No.35/6-D (New 77/6-D), St.32, F-6/1, Islamabad was allotted to Irfan ud Din Qureshi, who was civil servant BPS-16 in Collectorate of Customs vide allotment letter dated 14.10.2005. The allottee died during service on 18.06.2013 as per notification dated 08.02.2013 issued by Federal Board of Revenue, Government of Pakistan, whereafter the suit accommodation has been retained by her mother/respondent No.1 being dependent alongwith widow under Prime Minister Assistance Package for five years dated 13.06.2006, however, the Estate Office as well as M/o Housing & Works took stance that suit accommodation can only be retained till 17.06.2018 under Accommodation Allocation Rules, 2002 read with Prime Minister Assistance Package and as such the retention of government accommodation till age of

superannuation is available to respondent No.1 as widow is not living with respondent No.1 mother of the deceased civil servant. When confronted learned AAG alongwith Joint Estate Officer, contend that no evidence has been recorded qua the said factual dispute.

6. Perusal of record further reveals that Prime Minister Assistance Package 2006 has further been amended by Prime Minister Assistance Package 20.10.2014 issued by Establishment Division, whereby the family members of deceased civil servant can retain the government accommodation ***“till superannuation or five years whichever is earlier”*** and the said new package is effective from 15.06.2013 and as such the case of deceased civil servant Irfan ud Din Qureshi falls under the said date and both the Courts below have rightly appreciated this fact concurrently, however, the Estate Office took specific stance that the widow and mother of the deceased are living separately but this aspect has not been discussed in the impugned orders of Courts below nor such factual aspect has been justified through any evidence.

7. I have attended the findings of learned Trial Court in the concluding paragraph, which is reproduced as under:-

“Keeping in view of the above plaintiff is entitled to retain the possession of suit accommodation till the age of superannuation of deceased i.e. 20-12-2030 and after completion of retention period she is directed to handover peaceful possession of suit accommodation to the defendants. Instant suit is disposed off. File be consigned to record room after due completion and compilation.”

8. In above referred order learned Trial Court held that respondent No.1 is entitled to retain suit accommodation on the basis of Prime Minister Assistance Package 2014 till the age of superannuation of the deceased i.e. 20.12.2030 and the suit has been disposed of. The manner, in which said order was passed is contrary to the principles referred in Order XX Rule 1, 5, 6, 7 CPC as no decree sheet has been prepared, which is requirement of law to be followed and the suit cannot be disposed of rather a decree should be passed, however, the question which requires consideration is as to whether Trial Court requires adjudication of a matter by way of recording of evidence or otherwise, the same has to be determined by the Trial

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Court but all these aspects are silent although the findings given by learned Trial Court to the extent of application of Prime Minister Assistance Package 2014 are reflected from the record, which are in accordance with law, therefore, at this stage the irregularity committed by learned Trial Court cannot be rectified by this Court in terms of section 115 CPC to pass decree in favour of respondent.

9. In view of above discussion, the instant civil revision petition is allowed, the impugned order and judgment of Courts below are set aside and the matter is remanded to learned Trial Court with direction to decide the question afresh after hearing learned counsel for the parties keeping in view the observations recorded above within period of two months.

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam