

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT**

Civil Revision No. 09/2020  
Capital Development Authority.  
Versus  
Sher Muhammad and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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14.09.2020	Mr. Ghulam Shabbir Akbar, Advocate for petitioner. Mr. Babar Saeed Butt, Advocate for respondent No.1. Mohsin Pasha, Law Officer, Estate Office.
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Arguments on the point of maintainability of the instant civil revision petition have been heard.

2. Learned counsel for the petitioner argued that if the instant Civil Revision Petition is held to be not maintainable, same may be converted into writ petition as valuable rights of the petitioner are involved in the matter.

It is settled principle that in the light of the dictums of the apex Court, this Court is competent to convert appeal into revision and vice versa and constitutional petition into appeal or revision and vice versa.

3. The request of the petitioner under the principle *ibid* cannot be acceded to for the reason that Section 115 C.P.C has specially been substituted through the Civil Procedure Code (Amendment) Ordinance, 2019 (Ordinance No. XXII of 2019) promulgated on 1<sup>st</sup> November 2019 which was superseded by the Civil Procedure Code (Amendment) Act, 2020 promulgated on 22.02.2020, thereby Section 115 of the C.P.C, whereunder remedy

of Revision Petition was available, has been omitted. In such an eventuality where the legislature has specifically excluded from statute an expressly provided remedy, through an enactment, a revision petition cannot be converted in writ petition.

4. Record reveals that suit for declaration, permanent and mandatory injunction filed by respondent No.1 was decreed vide judgment and decree dated 10.05.2019. Against the said judgment and decree, petitioner filed an appeal, which was dismissed vide judgment and decree dated 03.12.2019, being assailed through the instant civil revision petition, filed on 18.01.2020.

5. The Civil Procedure Code (Amendment) Ordinance, 2019 (Ordinance No. XXII of 2019) was promulgated on 1<sup>st</sup> November 2019 which was superseded by the Civil Procedure Code (Amendment) Act, 2020 promulgated on 22.02.2020. The substitution of Section 115 in both the enactments i.e. Ordinance, 2019 and Act, 2020, referred to above is contained in Section 15, which reads as under:-

**"115. Revision.** ---Any party aggrieved by an order under section 104, passed by the Court of District Judge or Additional District Judge in an appeal against an interlocutory order passed by a Civil Judge or Senior Civil Judge, as the case may be, may within thirty days of the said order may file a revision to the High Court on an obvious misapprehension of law or in respect of a defect in jurisdiction."

The provision *ibid* clearly stipulates that any **party aggrieved by an order under section**

**104 C.P.C passed by the Court of District Judge or Additional District Judge in an appeal against an interlocutory order passed by a Civil Judge or Senior Civil Judge as the case may be, may file a revision within thirty days of said order to the High Court** while under the erstwhile provision of section 115 C.P.C, any case which has been decided by any court subordinate to High Court and in which no appeal lies thereto, could be assailed through a revision petition.

7. The instant civil revision petition was filed on 18.01.2020 when the Civil Procedure Code (Amendment) Ordinance 2020 was in the field, which was subsequently superseded by the Act, 2020. Thus, at the time of filing of the instant Civil Revision petition, the remedy was not available with the petitioner in terms of erstwhile Section 115 C.P.C. Consequently, the instant civil revision petition is not maintainable and accordingly **dismissed**. However, the petitioner would be at liberty to avail remedy available to him under the law, if so advised.

**(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE**

\*A.R. Ansari