

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**W.P No.2239 of 2020**

Azra Karim  
**Vs**  
Government of Pakistan, etc

Date of Hearing: 11.09.2020

Petitioner by: Raja Yasir Shakeel, Advocate

Respondent No.1 by: Mr. Nazar Hussain Shah, AAG

Respondent No.2 by: Mr. Mohsin Pasha, Law Officer.

Respondent No. 3 by: M/S Raheel Azam Khan &  
Muhammad Waqas Saleem,  
Advocate

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**Ghulam Azam Qambrani, J:** Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has invoked the jurisdiction of this Court with the following prayer;-

“Under the circumstances, it is, therefore, respectfully prayed that impugned judgment and decree dated 10.08.2020 may kindly be set aside and order dated 07.03.2020 passed by Learned Civil Judge 1st Class, Islamabad-West may kindly be restored. Any Judgment and decree dated 10.08.2020 treating the appeal as revision may kindly be declared illegal, unlawful without jurisdiction having no value in the eyes of law.

Application under Order 39 Rules 1 & 2 CPC may kindly be accepted and respondents may kindly be directed not to disturb the possession of petitioner on suit quarter.

Any other relief which this Hon'ble Court deems fit and proper keeping in view circumstances of case may also be granted.”

2. Brief facts of the petition are that the petitioner is serving as Professor in BS-20 under Federal Government Educational Institution

(Cantt/ Garrisons) Ministry of Defense and presently posted as Principal in Federal Government Women College, Abid Majeed Road, Rawalpindi; that husband of the petitioner namely Malik Abdul Hamid Balghari was working in (BS-20), Ministry of Planning Development and Reforms, who was allotted House No. G-111, Luqman Hakeem Road, G-6/3, Islamabad (hereinafter will be referred to as "**suit house**"), who stood retired from the said Ministry on 27th of December 2018, therefore the petitioner being Federal Government Servant in BPS-20 is entitled for the allotment of suit house as specified under Rule 15(2)(B) of Accommodation Allocation Rule, 2002; that the petitioner is residing in the suit house since April, 2004, and as per Rules, *ibid*, the serving spouse living with the Federal Government Servant can be allotted the same accommodation, if he/ she is eligible and otherwise entitled for the said accommodation. The petitioner on 26<sup>th</sup> of December, 2018 applied for the allotment of the same accommodation but respondents No. 1 and 2 did not listen to the petitioner, in spite of the fact that she is entitled for the allotment of the same accommodation/suit house. The petitioner again approached respondent No. 1 and 2 for allotment of the accommodation/suit house as per the rules but they informed the petitioner that the said house is being cancelled from the name of petitioner's husband on 27.06.2019, and further gave a verbal notice for the vacation of suit house to the petitioner. Being aggrieved, the petitioner has filed a suit for declaration permanent and mandatory injunction on 24.04.2019 in the court of Senior Civil Judge, West, Islamabad and along with the suit she also filed an application under Order XXXIX Rules 1 and 2 read with section 151 CPC and vide an order dated 07.03.2019, the learned Civil Judge, Islamabad confirmed the stay application of the petitioner. Against the said order, respondent No.3 preferred an appeal before the learned Additional District Judge, Islamabad, which was accepted vide judgment dated 10.08.2020 and plaint of the petitioner was rejected under Order VII Rule 11 CPC hence, this petition.

3. Learned counsel for the petitioner contended that the impugned judgment and decree is against the law and facts; that the learned

Additional District Judge, Islamabad, has not applied his judicial mind while passing the impugned judgment and decree; that no prayer for rejection of plaint was made in the prayer clause of memo of appeal filed by respondent No.3 before the learned Appellate Court; that while passing the impugned judgment and decree, the learned Additional District Judge, Islamabad has ignored the fact that the department of the petitioner is an entitled department; that the valuable rights of the petitioner are involved, which have been curtailed through the impugned judgment and decree and if the same is not set-aside, she will suffer irreparable loss. Lastly, prayed for acceptance of this petition.

4. Conversely, learned law officer of respondent No.2 submitted that the petitioner is on attachment and posted at Federal Government Women College, Abid Majeed Road, Rawalpindi, therefore, she is not entitled for allotment of Government accommodation; that the Federal Government Education Institutions (Cantt/ Garrisons) are under the control of Cantonment, Rawalpindi, and its status of subordinate offices and not as attached Departments, therefore, its employees are not eligible for government accommodation from the pool of Estate Office in terms of Rule 3(1) of A.A.R. 2002; that the petitioner being an employee of ineligible department, is not entitled for the benefit of Rule 15(2) (b) of A.A.R. 2002 and due to this reason, her application has been regretted being not covered under the said Rule vide letter dated 26.06.2019. It is further submitted that the petitioner is still receiving her salary from her own department and lastly prayed for dismissal of the instant petition.

5. Learned counsel for respondent No.3 submitted that the petitioner is in unlawful possession of the suit house; that respondent No.3 has been allotted the said house vide letter dated 15.11.2016 and since then he is waiting for its possession.

6. Arguments of learned counsel for the parties have been heard and perused the record with their able assistance.

7. Bare perusal of the record reveals that vide letter dated 03.01.2017 Educational Institutions under the Directorate of Cantt & Garrisons (Education Institutions) have been declared as non-entitled in terms of Rule 3(1) of Accommodation Allocation Rules, 2002 and as the

petitioner is serving under the Federal Government Educational Institutions Cantt/ Garrisons, and its employees are not entitled for the government accommodation under the Accommodation Allocation Rules, 2002, as such, the petitioner is also not entitled for the government accommodation. Husband of the petitioner stood retired from government service on 27.12.2018 and the grace period of six months has already elapsed on 27.06.2019, hence, prima facie, she is in illegal occupation of the suit house, which has been allotted to respondent No.3 on 15.11.2016 after waiting for many years.

8. In view of the above, the petitioner has failed to make out a prima facie arguable case in her favour and balance of convenience also leans in favour of respondent No.3, who is suffering since the suit house was validly allotted in his name but he is waiting for the peaceful possession of the suit house to him.

9. So far as the contention of the petitioner that the conversion of appeal into revision by the learned Additional District Judge, Islamabad is concerned, in this regard, I am fortified by the law laid down in the case reported as Saleh Muhammad and 6 others Vs. Arz Muhammad and 9 others (PLD 2015 Balochistan 135) wherein it has been held as under:-

“Now, the next question is whether one type of proceedings could be converted into another type of proceeding? There is no cavil to the proposition that prime purpose, paramount consideration and basic theme of the legal proceedings is to do justice between the parties; and to achieve this object; of course, subject to competency of the Court, the nature of the proceedings are always of secondary consideration, because too much adherence to technicalities, which impede the course of justice cannot be countenanced by the court, therefore, one type of proceedings can conveniently be converted into another type proceedings just to avoid multiplicity of proceedings or failure of justice. By holding the view I am fortified by the dictum laid down in the judgment titled as 'Liaqat Ali v. Bashiran Bibi and 9 others' reported in 2005 CLC 11 (relevant at page-24), wherein it has been held as under:-

"32. We will also like to observe that rules of procedure are intended to foster justice, technicalities, unless these offer insurmountable hurdles, cannot be permitted to operate as a

tyrant master. And, to avoid failure of justice and multiplicity of litigation, one type of proceedings could be converted into another type of proceedings."

12. Adverting to second limb, whether the circumstances of this case justify the conversion of instant revision into appeal under section 104, C.P.C. So far as the conversion of an appeal into a revision or vice versa is concerned, the law stands settled that a revision can be converted into an appeal and an appeal can be converted into revision. So much so, if necessary the proceedings could be re-converted. Admittedly, in this case revision against the impugned order is not competent and a party may not be deprived of the right of having an opportunity of hearing by a competent forum just on the basis of technicalities. If this revision is not converted into an appeal, resultantly the petitioner shall be deprived of the right of hearing in a case wherein the question of interpretation of the order of Hon'ble apex Court by the executing Court is involved of course such a case, cannot be left at the mercy of technicalities, therefore, I feel no legal difficulty nor there is any legal bar, hitch or impediment in converting the instant civil revision in to an appeal keeping in view the facts and circumstances of this case. In this regard I am fortified by the dictum laid down in the judgments of Hon'ble apex Court in case titled as 'Mst. Noor Jahan v. Mst. Roshan Jahan and 6 others' reported in 1994 SCMR 2265, relevant observations wherefrom reads as under:--

"5. We are convinced that although the order dated 3-4-1991 of the trial Court was not an appealable order, yet under section 115(2), C.P.C. the District Judge had revisional power to deal with it, so it will be deemed that the appeal was actually heard and decided as a Revision. In this view of the matter order dated 26-10-1991 of the District Judge could be treated as a revisional order precluding further interference by the High Court under section 115(4), C.P.C. and as such impugned order/judgment is without jurisdiction/authority."

10. In the case reported as Muhammad Hafeez and another Vs. District Judge, Karachi East and another (2008 SCMR 398), it has been held as under:-

"It is well-settled that in the event of conflict of judgments finding of Appellate Court are to be preferred and respected unless it is shown from the record that

such findings are not supported by evidence; that the conclusions drawn are against the material on record; that the judgment of the Appellate Court suffers from misreading or non-reading of evidence or that the reasons recorded for reversal of judgment are arbitrary, fanciful and perverse.”

11. In the instant case, the learned Additional District Judge, Islamabad, upon careful, conscience and lawful appreciation of evidence of the petitioner in juxtaposition to the case set up by the respondents allowed the appeal and rightly concluded that the petitioner/ plaintiff being in illegal occupation of the suit house, had got no cause of action to bring the suit and held that suit filed by the petitioner/ plaintiff is bad being destitute of any cause of action, which is hit by the provisions of Order VII Rule 11 CPC and rightly rejected her plaint under Order VII Rule 11 of CPC.

12. In view of what has been discussed above, learned counsel for the petitioner has failed to point out any illegality or irregularity, misreading or non-reading of the evidence available on record, warranting interference by this Court in the impugned judgment and decree dated 10.08.2020, passed by the learned Additional District Judge, Islamabad. Hence, this petition, being devoid of any force, is hereby dismissed.

~~Ghulam Azam Qambrani~~  
Judge

Announced in Open Court, on this 29<sup>th</sup> day of, September, 2020.

Judge

S.Akhtar