

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

Writ Petition No. 1114 of 2020

Abdul Fateh Bhatti

VS

Abdul Qadir Memon and others.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(1)	13.04.2020.	Mr. Muhammad Safdar Janjua, Advocate for the Petitioner.

Petitioner, through this petition has challenged order dated 07.03.2020, passed by learned Additional District and Sessions Judge, (West) Islamabad, in Civil Appeal No. 23/2020, whereby order passed by the learned Rent Controller (West), Islamabad, dated 23.10.2019, was affirmed.

2. Learned counsel for the Petitioner contended that the Petitioner obtained the premises bearing House No. 388, Type-E, Street No. 58, Sector G-6/4, Islamabad, on rent from Respondent No. 1, through a verbal agreement and also advanced an amount of Rs. 10,13,000/- as loan to Respondent No. 1, which is still recoverable. Learned counsel further contended that on the basis of verbal rent agreement, Petitioner can legally retain the premises mentioned above, for which he is paying Rs. 29,000/- per month as rent.

3. Admittedly, Respondent No. 1 is employed as officer of BPS-18 in Federal Directorate of Education Islamabad, and above said House has been allotted to him by the Estate Office

(Respondent No. 4) on 20.07.2017, being a government employee. It appears that the Petitioner was already in occupation of this property, however, after its allotment to Respondent No. 1, he refused to vacate the same, therefore, the Respondent No. 1 filed a civil suit for declaration, possession, mandatory and permanent injunction before the Senior Civil Judge (West), Islamabad. In reply thereof the Petitioner (defendant No. 1 in the suit) filed application under Order VII Rule 11 CPC for rejection of the plaint, however, the learned Trial Court, dismissed the application under Order VII Rule 11 CPC and ordered for ejection of the petitioner from the premises, forthwith, while holding as under:-

It is very unfortunate and astonishing to note that Civil suit is with respect to suit accommodation, which was allotted by defendants to plaintiff and he was given possession but a stranger defendant No. 1 has occupied the suit accommodation on plea that plaintiff has handed over possession to him against loan he lent to him. Admitted, suit accommodation is a Govt. property, which can be allotted to Federal Govt. employee only and plea of defendant No. 1 qua his possession is neither protected under law rather it is to be dealt with iron hands, how come a stranger could get possession of Govt. property on understanding that he has given some loan to plaintiff. Plea is altogether of no legal effect even if prove. Since plaintiff being allotted is a lawful claimant of suit accommodation and likewise has been recorded in the office of defendants and regular deduction has been made, application merits dismissal and on foregoing facts and circumstances there is no need to proceed further with instant suit. The matter is so obvious that plaintiff is a Govt. servant, who was allotted suit accommodation and was delivered possession thereof, which has been unauthorizedly occupied by defendant no. 1 on reason given in application, thus deserve to be ejected forthwith. Therefore, keeping in view order Rule 15(3) CPC suit is summarily decreed.

Being dissatisfied with the order, Petitioner filed appeal before the Additional District Judge (West), Islamabad, who, vide order dated

07.03.2020 (impugned herein), affirmed the order passed by the learned Trial Court by observing as under,:-

The version of the appellant/defendant No. 1 as contained in his application u/o 7 Rule 11 CPC is that the respondent No. 1/plaintiff took an amount of Rs. 10,13,000/- as loan on different occasions from the appellant/defendant No. 1 and handed over the possession of the suit accommodation to him through a verbal agreement, hence the appellant/defendant No. 1 is entitled to retain the possession of the suit government accommodation. But this contention of the appellant/defendant No. 1 has no lawful force as the suit accommodation is a government accommodation which can only be retained by a government servant i.e. the appellant/defendant No. 1. The estate office in its written statement has admitted that the suit government accommodation was allotted to the respondent No. 1/plaintiff and possession was also handed over to him by the estate office. No doubt that the appellant/defendant No. 1 may proceed against the respondent No. 1/plaintiff for recovery of his amount of loan, if any but he has no right to retain the possession of the suit government accommodation as the same cannot be rented out to a private person.

5. Before this Court the learned counsel while repeating the same arguments as made before the learned courts below submitted that the Petitioner is tenant of the suit house and is paying monthly rent, whereas, an amount of Rs. 10,13,000/- is also recoverable by him from Respondent No. 1. It is strange to note that how the Petitioner is constantly indulged in the litigation to occupy the house on the above reasons claiming it to be lawful grounds for legitimate tenancy of the government accommodation. For the sake of arguments, if contention of the petitioner is considered to be correct even then instead of illegally occupying a government accommodation, which has been lawfully allotted to Respondent No. 1, he should avail the proper course provided in law in terms of Chapter IX of the Accommodation Allocation Rules, 2002,

which pertains to cancellation and ejectment from government accommodation. Moreover, to the extent of amount recoverable from Respondent No.1, petitioner may file the recovery suit against Respondent No.1. But, under the present circumstances a government accommodation lawfully allotted to a Federal Government Employee cannot be occupied by a private person who, under the circumstances, is an illegal occupant and has no *locus standi* to seek relief through filing of writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

6. In view of the above discussion, I am of considered view that order/judgment dated 23.10.2019 and 07.03.2020, passed by the learned Trial as well as Appellate Courts, respectively, being in consonance with law do not call for any interference by this Court. Therefore, instant Petition, being devoid of any merit is hereby *dismissed in limine.*

(LUBNA SALEEM PERVEZ)
JUDGE