

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

**I.C.A. No.73 of 2014**  
**Muhammad Ayub Chaudhary**  
***Versus***  
**Chairman, F.B.R.**

**Appellant**                      In person.  
**Respondent by:**              Mr. Saeed Ahmad Zaidi, Advocate  
**Date of Decision:**          17.02.2020.

**FIAZ AHMAD ANJUM JANDRAN, J.-** This Intra Court Appeal is directed against the order dated 13.01.2014, passed by learned Single Judge-in-Chambers, whereby Writ Petition No.569/2013, filed by the appellant was dismissed. For ready reference, operative paras 4&5 of the impugned order are reproduced hereunder:-

“4. From the divergent pleadings of the parties, it observed that factual controversy exists which cannot be resolved without thorough probe and recording of evidence while such exercise is not permissible in constitutional jurisdiction.

5. Even otherwise, the claim pertains to recovery of an amount for which an alternate remedy is available before the courts of plenary jurisdiction and undoubtedly where an adequate efficacious alternate remedy is available, direct writ petition is not maintainable.”

2. Relevant facts for the disposal of instant ICA are that appellant filed writ petition No.569/2013 seeking direction against the respondent-FBR to make payment in terms of outstanding professional fee alongwith profit at bank rate from 01.10.2010 till the date of payment. The respondent-FBR, in response to notice entered appearance and tendered para-wise comments wherein, it was asserted that the petitioner earlier filed complaint before the learned Federal Tax Ombudsman and during the hearing before the learned Federal Tax Ombudsman, appellant settled his claim of professional fee for Rs.150,000/- in six writ petitions. It was also objected that a writ petition

regarding claim for recovery of an amount wherein controversy is involved, was not maintainable. Besides this it was also asserted that the claim of the appellant was based on exaggeration rather against his own version contained in an application dated 07.03.2012. Learned Single Judge-in-Chambers after hearing the contesting parties dismissed the petition, hence this appeal.

3. The appellant asserted that the facts which form the basis of the claim for recovery are admitted, and need not be proved by recording evidence. Therefore, it cannot be said that writ petition contains factual controversy. It was also argued that the respondent department had been paying huge sums in terms of professional fee to other professionals while the appellant is being deprived of his due money, therefore, the question of discrimination makes the case of the appellant maintainable in terms of Article 199 of the Constitution.

4. On the other hand, learned counsel for respondent department argued that the claim for recovery of certain amounts did not fall within the ambit of Article 199 of the Constitution; the appellant had already been paid an amount of Rs.150,000/- pursuant to a mutual settlement arrived at before the learned Federal Tax Ombudsman , therefore, he cannot re-agitate the claim again and that writ petition due to having factual controversy was not maintainable.

5. Heard the learned counsel for the parties and examined the record with their able assistance.

6. It is the claim of appellant that the respondent department had to make payment of Rs.3,900,000/- while the amount paid was in respect of miscellaneous charges, whereas the respondent department claimed to have settled the dispute with mutual understanding before the learned Federal Tax Ombudsman, pursuant to which appellant had received an amount of Rs.150,000/- against his entire claim. This controversy, of course,

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requires recording of evidence which exercise is not permissible in constitutional jurisdiction.

7. Having examined the case from all angles, we find that the appellant retains adequate efficacious alternate remedy before the court of plenary jurisdiction while constitutional jurisdiction for recovery of professional fee/amount cannot be invoked, therefore, order impugned herein, does not warrant any interference. Consequently, the instant Intra Court Appeal is dismissed.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

Suhail