

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**

No.

IHC/Judl.Deptt.

**(REVISED FORM OF BLUE SLIP)**

**Case No.** Crl Misc - 56 - 13

**Titled.** Umar Abbasi Vs. Mumtaz Ahmed Siddique etc

a) Judgment approved for reporting

✓  
Yes/No

b) Judgment any comment upon the conduct of the  
Judicial officer for quality of the impugned judgment  
Is desired to be made.

Yes/No

(In case the answer is affirmative separate  
confidential note may be sent to the Registrar  
drawing his attention to the particular aspect).

Initial of the Judge.

NOTE.

1. If the slip is used, the Reader must attach on top of first Page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for reporting of any comment is to be made about the judicial officer / quality of judgment.
3. This slip is only to be used when some action is to be taken.

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

Crl. Misc. No. 56-2013  
Umar Abbasi-Vs-Mumtaz Ahmad Siddiqui Etc|:

Date of Hearing: 28<sup>th</sup> May, 2013:  
For Petitioner: Mr. Munawar Hussain Abbasi,  
Advocate:  
For Pvt. Respondents: Mr. Razaqat Islam Awan, Advocate:  
For State: Mr. Shabbir Ahmad Abbasi learned  
Standing Counsel.

**JUDGMENT**

**MUHAMMAD ANWAR KHAN KASI, CJ:** The petitioner [Umar Abbasi], by way of captioned criminal misc. under section 561-A Cr. PC, assails the order dated 16<sup>th</sup> February, 2013, passed by learned ASJ, whereby his application for appropriate order was dismissed by observing that the petitioner failed to establish locus standi and the application, amounting to a review of order dated 09.01.2013, cannot be entered due to bar under section 369 Cr. PC respecting review or alteration of the order already passed.

2- The petitioner's case is that he is lawful tenant of Shop No. 710, I&T Centre, G-6/1, Aabpara, Islamabad on the basis of an oral agreement with respondent No. 1 [Mumtaz Ahmad Siddiqui], since 11.07.2012 and is running a business of mobile easy-load but the respondent No.3 [SHO, PS Aabpara] on the direction of learned ASJ dispossessed him from the shop in question despite a status quo order by the learned Civil Court. It is further averred that he also filed a Writ-Petition against the impugned action but the same was dismissed in limine by observing that order of learned ASJ dated 9-1-2013 cannot be challenged as he was not a party and failed to show any justification for challenging the same through writ petition.

3- Heard & record perused.

4- It will be just to write-down a brief history of Shop No. 710, I&T Centre, G-6/1, Aabpara, Islamabad. It was owned by Mufti Naveed Manzoor, who leased out the same to respondent No.2

herein [Tahir Aslam Mufti] in January, 2006. Subsequently, the owner of the suit shop Naveed Manzoor died on 07-01-2006 and his legal heirs then appointed Mufti Pervez Manzoor, as their attorney, who filed an ejectment petition against the respondent No.2 on 21-06-2008 which was allowed on 08-07-2010 and said order was assailed by the respondent No.2 in appeal but the same met with failure on 08-12-2010 and Writ-Petition No. 116/2010, preferred against the concurrent findings was also got withdrawn by the respondent No.2 vide order dated 14-10-2011. After first round of litigation, Mufti Pervez Manzoor filed an Execution Petition through respondent No.1 [Mumtaz Ahmad Siddiqui] by appointing him as special attorney on 14-12-2010 wherein the possession was handed over to the respondent No.1 on 12-01-2011 but, allegedly he was dispossessed on the same day. The respondent No.1 then preferred a Complaint under Illegal Dispossession Act, 2005 which was dismissed vide impugned order dated 13.01.2012 by observing that there was no incriminating piece of evidence on the file to proceed further with the trial of the case and that complainant [respondent No.1 herein] may seek remedy regarding possession of disputed shop from the learned Executing Court where his execution petition was pending. The said order has been challenged by respondent No. 1 by way of **Writ Petition No. 666-2012.**

5- Thereafter, the respondent No.1 moved the learned Executing Court, who issued fresh warrant of possession, and in pursuance thereto, possession was handed over to him on 11.07.2012 but again allegedly he was dispossessed on the same day and once again filed Private Complaint under the Act which was also dismissed by way of order dated 09-01-2013 with the observation that complaint under the Act, 2005 is not maintainable. The said order was also challenged through Writ Petition No. 684-2013 before this Court. However, while proceeding under Section 7 of the Act, the possession was restored to respondent No.1 on 04.03.2013 but he was again dispossessed third time on the same

9.

day and then filed fresh Complaint under the Act, which is still subjudice before learned ASJ.

6- It is noteworthy that two FIRs were also registered against the various persons under different sections with allegations of causing hindrance & obstruction during the process of execution.

7- The two writ-petitions [No. 666-2012 & 684-2013] filed by the respondent No.1 were allowed vide order of even date in the following terms:-

“ The result would be that both the impugned orders dated 13.01.2012 & 09.01.2013, are set-aside and the matter is remitted to the court of learned ASJ, who is presently seized of the third complaint under the Act, 2005, with direction to proceed with all the three complaints, strictly in accordance with law after providing full opportunity of hearing & adducing evidence to both the sides and decide all the three petitions, on their own merits, within shortest possible time, but before that the possession of the shop-in-question shall be restored forthwith to the person, having lawful decree in his possession, after complete verification & digging out the truth. The learned ASJ shall ensure the application of rule of law at all costs and shall submit weekly report to this Court through the Registrar, for perusal in Chambers. Copy of this order be also sent to IG, ICT with direction to take immediate steps for implementation of Court orders and if there is any violation from anyone, he should be taken to task and should be dealt with an iron hand. While taking it as an opportunity, the learned MIT of this Court is directed to procure reports from both the learned D&SJs, as to how many execution petitions and complaints under the Act, 2005 are pending adjudication. The complete details in the shape of a statement showing present status and reasons for delay be requisitioned, which shall reach this Court within one week. A copy of the order be also sent to both



the learned D&SJs [East & West] for information & compliance."

8- It is also necessary to mention that the instant case holds matchless circumstances as there is allegedly continuous defiance of Court orders and alleged simultaneous dispossession, first on 12.01.2011, second on 11.07.2012 and then on 04.03.2013 whereas the present petitioner in Para 5 of his petition admitted the fact of having possession of the shop in question which was taken over by respondent No.3 [SHO] in pursuance to order of learned ASJ dated 9-1-2013. The petitioner also claims to have possession of the shop since 11.07.2012 and it is the date when, allegedly the respondent No.1 was disposed second time, therefore, petitioner is a necessary party to be impleaded as a respondent to second complaint under the Act, 2005 as he is admitting the possession of the shop in question since 11-07-2012, the date of alleged second dispossession.

9- In view of above, the impugned order dated 16.02.2013 is set-aside and the learned ASJ is directed to proceed with second complaint of the respondent No.1 in accordance with the directions passed in two writ petitions of respondent No.1 vide order of even date after arraying the petitioner as one of the respondents besides others. No orders as to costs.

MUHAMMAD ANWAR KHAN KASI  
CHIEF JUSTICE

Announced in Open Court, on this 17th day of June, 2013:

M. Suhail

CHIEF JUSTICE  
7.