

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, **ISLAMABAD**

CIVIL REVISION NO.13 OF 2020

MUHAMMAD KHURRAM SHAHZAD

Vs.

ESTATE OFFICE OF PAKISTAN, ETC

Petitioner by : Mr. Muhammad Ahsan Qureshi, Advocate.

**Respondents by : Mr. Farrukh Shahzad Dall, Assistant Attorney General.
Mr. Muhammad Mohsin Pasha, Joint Estate Officer.**

Date of hearing : 27.02.2020.

LUBNA SALEEM PERVEZ, J. Through instant revision petition, petitioner has assailed judgment dated 16.01.2020, passed by learned Additional District Judge (West), Islamabad, as well as order dated 05.12.2019, passed by learned Civil Judge, (West) Islamabad, whereby the petitioner's appeal against order dated 05.12.2019 and application u/o XXXIX Rule 1 & 2 CPC were dismissed, respectively.

2. Facts, as per record, are that the Petitioner filed a suit for declaration, mandatory and permanent injunction before the Civil Judge, (West) Islamabad, claiming entitlement to retain the possession of suit premises bearing Quarter No. 1/5-B, Street No. 28, Sector G-7/2, Islamabad, being a government employee working in the Ministry of Information and Broadcasting as Naib Qasid. Along with the suit, Petitioner also filed application under Order XXXIX Rule 1 & 2 CPC for grant of temporary injunction, which was dismissed by the learned Civil Judge, (West) Islamabad, vide order dated 05.12.2019, on the ground that neither any record qua allotment of the petitioner/plaintiff exists with the respondent/defendant (CDA) nor with the concerned inquiry office of CDA and that the petitioner/plaintiff could not place on record his salary slips for the year 2012-13 to show his possession over the suit premises. Being aggrieved of order dated 05.12.2019, petitioner preferred appeal before the

learned Additional District Judge, (West) Islamabad, praying for setting aside the same and acceptance of application under Order XXXIX Rule 1 & 2 CPC. Learned Appellate Court vide Judgment dated 16.01.2020, dismissed the appeal observing that the application for temporary injunction is not open to any legitimate exception and calling interference in the order dated 05.12.2019. The judgments dated 16.01.2020 & 05.12.2019, are now challenged before this Court through this civil revision u/s 115 CPC with the prayer for acceptance of application under order XXXIX Rule 1 & 2 CPC and grant of temporary injunction for retaining the suit Quarter till final decision of the suit pending trial before the learned Civil Court.

3. Learned counsel for the Petitioner submitted that the petitioner is a *bonafide* allottee in possession of the suit property since, 2012 which was allotted to him vide office order No. 1/5-B, St.28, G-7/2/EIII/EO, dated 12.10.2012. Learned counsel further submitted that the rent of this accommodation has duly been deducted from petitioner's salary by the AGPR, therefore, the respondents are illegally and unlawfully threatening the petitioner for forcible eviction from the suit quarter. Learned counsel in support of his contentions placed reliance on the case law reported as Secretary to Government of NWFP Zakat/Social Welfare Department, Peshawar vs. Sadullah Khan (1996 SCMR 8413) and Nestle MILKPAK Limited vs. Classic Needs Paksitan (Pvt.) Ltd. (2006 SCMR 21).

4. On the other hand, learned AAG appearing on behalf of respondents submitted that the suit quarter was allotted to petitioner's father who is also residing in the same quarter and is going to retire on 29.11.2020. It was further contended that petitioner's claim is not legally sustainable as he was working as a Naib Qasid (BPS-01) and under rule 15(2)(b) of Accommodation Allocation Rules, 2002, he is not entitled for the allotment of the suit quarter. Learned AAG further submitted that the petitioner has not produced any original document relating to allotment of the suit quarter and alleged that the petitioner is illegally occupying the same. Learned AAG contended that petitioner's application under order XXXIX Rule 1 & 2 CPC has rightly been dismissed by both the Courts below and instant civil revision petition before this Court is also liable to be dismissed.

5. I have heard the learned counsel for Petitioner as well as learned Assistant Attorney General and perused the documents placed on record .

6. The Petitioner through this petition seeks setting aside of orders passed by the learned courts below and grant of interim injunction u/o XXXIX Rule 1 & 2 CPC on the ground that the courts below have not appreciated petitioner's apprehension that he would be dispossessed from the suit quarter if interim relief is not granted to him which will cause an irreparable loss to him. However, perusal of the record shows that the suit quarter, the title of which is disputed in the suit, is allotted in the name of petitioner's father namely Muhammad Azam Qureshi who is also employed in the same ministry i.e. Ministry of Information and Broadcasting and is going to retire on 29.11.2020. Record further transpires that petitioner's father is also residing in the suit quarter. Perusal of impugned judgment dated 16.01.2020, reveals that the petitioner's father Muhammad Azam Qureshi has also filed a civil suit on 14.01.2020. It is appropriate to reproduce the relevant para of the judgment dated 16.01.2020 which contains the reasoning given by the learned appellate court on the basis of which the petitioner's appeal qua application for interim injunction filed u/o XXXIX Rule 1 & 2 CPC has been dismissed which reads as follows:-

"5. During the course of arguments, Joint Estate Officer has produced copy of a civil suit titled "Muhammad Azam Qureshi vs. Federation of Pakistan etc." filed by the father of present appellant/plaintiff on 14.01.2020, wherein he alleged that his real son (appellant/plaintiff) filed an application on 12.05.2011 for allotment of suit accommodation pursuant to which allotment was made to him on 12.10.2010 and process of handing over of possession was also completed through concerned inquiry on 25.10.2020, however, house rent was being deducted from his salary till 30.07.2014. Thus, claim of the appellant/plaintiff that since allotment he is paying utility bills and 5% house rent has duly been belied by his own father and apparently it was the reason that when learned Trial Court directed the appellant / plaintiff to produce the salary slips showing deduction of house rent, he did not do the needful. Therefore, he is not having a good arguable case, hence, view taken by the learned Trial Court while dismissing the application for temporary injunction is not open to any legitimate exception, calling interference by this court. Therefore, instant appeal stands dismissed."

Perusal of the impugned orders passed by both the learned Courts below shows that petitioner has miserably failed to make out a case for grant of interim

injunction and the learned Courts below have rightly decided the matter by passing well reasoned orders.

7. Since, ingredients for grant of temporary injunction do not exist in favour of petitioner, therefore, I am of the considered view that both the Courts below have rightly dismissed the application under Order XXXIX Rule 1 & 2 CPC and appeal there against. Petitioner has failed to make out a case for interference by this Court, hence, instant Revision Petition, is hereby dismissed.

(LUBNA SALEEM PERVEZ)
JUDGE

Junaid Usman/