

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

**Civil Revision No.49/2015**

Bashir Ahmad Malik  
Vs.  
M/o Narcotics Control, Government of Pakistan, Islamabad, etc.

Petitioner By:                      Wife of the petitioner in person.  
Respondents By:                      Raja Touqeer Ahmed Satti, SPP ANP  
Date of Hearing:                      27.02.2020.

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**GHULAM AZAM QAMBRANI, J:** Through the instant Civil Revision, the petitioner has challenged order dated 03.06.2014 passed by the learned Civil Judge 1<sup>st</sup> Class (West) Islamabad, whereby application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter be called as “CPC”) moved by defendant/respondent No.3 was accepted and plaint of the petitioner/plaintiff was rejected. The petitioner being aggrieved preferred an appeal against the said order, which was also dismissed vide order dated 06.11.2014, passed by the learned Additional District Judge (West) Islamabad.

2. Brief facts as gleaned out from the case are that the petitioner/plaintiff purchased shop No.5, 69 West Ratta Mansion Blue Area, Islamabad, vide sale deed No.5169, dated 29.12.1996 from Khalid Latif through his attorney namely, Muhammad Hanif and rented out the same to respondent No.3 in the year 1999, who was paying the agreed rent regularly to him. In the year 2010, respondent No.3 stopped the payment of rent to the petitioner on the ground that respondent No.2 issued a letter/ notice, dated

01.05.2010 for the payment of rent to ANF. Thereafter, the petitioner filed a suit for declaration and permanent injunction with the prayer to declare the said notice as null and void. In pursuance thereof, respondent No.3 filed an application under Order VII Rule 11 CPC on the ground that the disputed property has been confiscated in favour of the Government in the year 2003; therefore, the Government is owner of the said property. The application of respondent No.3 was accepted and plaint of the petitioner was rejected under Order VII Rule 11 of CPC vide order dated 03.06.2014 by the learned trial Court. The appeal of the petitioner filed against the said order was also dismissed vide order, dated 06.11.2004 by the learned Additional District Judge (West) Islamabad. Hence, the instant revision petition.

3. It has been contended on behalf of the petitioner that; the impugned orders passed by the learned Courts below are not sustainable in the eye of law and liable to be set-aside; the impugned orders are result of misreading and non-reading of the record; it is admitted fact that respondent No.3 is a tenant of the petitioner/plaintiff and under the law a tenant cannot challenge the ownership of the landlord; the petitioner is a bonafide purchaser of the suit shop; there are also other tenants in the plaza and they are paying rent to their landlords; lastly contended that the notice issued to tenant of shop No.7 was challenged before the learned Court through Writ Petition No.2450/2010 titled "*Shaukat Bhatti vs. ANF etc*", whereby the said notice was declared as null and void vide judgment, dated 10.10.2012. The learned counsel has prayed that the impugned orders passed by the learned Courts below be set-aside and the notice issued by respondent No.2 be declared as null

and void and the learned trial Court be directed to proceed further in the matter and decide the same on merits. The learned counsel has prayed for acceptance of the instant petition.

4. Conversely, the learned Special Public Prosecutor ANF, vehemently opposed and denied the assertions made on behalf of the petitioner and supported the orders passed by the learned Courts below. It has been argued that the petitioner has not been able to point out any misreading, non-reading or that the learned Courts below had committed any illegality or material irregularity. It is argued that the notice was issued to respondent no.3, who is presently in occupation of the suit property and not to the present petitioner. The notice, dated 24.07.1995 was issued in the name of Khalid Latif under section 31 of the Act of 1977. The present petitioner had purchased the suit property in the year 1996, much later than the notice. The petitioner has no locus standi in the suit property. Hence prayed for dismissal of the instant revision petition being devoid of merits.

5. Arguments heard, available record/material perused.

6. Perusal of record transpires that the petitioner purchased the shop in question vide sale deed No.5169, dated 29.12.1996 and later he rented out the same to respondent No.3 in the year 1999. The tenant was regularly paying the rent to the petitioner, but in the year 2010, he stopped the payment of rent to him. The tenant asserted that he stopped the payment of rent to the petitioner because respondent No.2/ANF issued a notice, dated 01.05.2010. The petitioner challenged the said notice by filing a suit for declaration and permanent injunction against the respondents. Respondent No.3 filed an application under Order VII Rule 11 CPC

for rejection of the plaint on the ground that the property has been confiscated in favour of Government in the year 2003, and prayed for acceptance of the application, which was accepted vide order, dated 03.06.2014 and the said order was also upheld by the learned Appellate Court vide order, dated 06.11.2014.

7. Perusal of record shows that the petitioner has assailed the notice, dated 01.05.2010. The said notice was issued by the Ministry of Narcotics Control, Rawalpindi in the name of Mr. Abdul Rauf, respondent no.3, which is reproduced as under.-

**GOVERNMENT OF PAKISTAN**  
**MINISTRY OF NARCOTICS CONTROL**  
**REGIONAL DIRECTORATE ANTI NARCOTICS FORCE**  
**RAWALPINDI.**

No. 1(2)Assets/ANF/IR/96

1/May, 2010.

To        *Mr. Abdul Rauf s/o Abdul Ghafoor,  
House No.247, Street No.2,  
Margalla Town, Islamabad.*

Subject:- **PAYMENT OF OUTSTANDING RENTS/DUES TO**  
**ANF**

*It is intimated that half share of Forfeited Plaza i.e. 69-West Plaza (Ratta Mansion), Blue Area Islamabad to extent share of Khalid Latif s/o Ch. Muhammad Shafi has been ordered to transfer in favour of Federal Government through Administrator/Regional Director, Anti Narcotics Force Rawalpindi/Islamabad vide court order dated 15.09.2009.*

*You are hereby directed to deposit rent/all outstanding dues w.e.f. 15.09.2009, in PLS Account No.8843-2, National bank of Pakistan, Murree Brewery Branch (551) Rawalpindi in the name of Administrator/Regional Director, Anti Narcotics Force Rawalpindi/Islamabad under intimation and after that original Deposit slip be forwarded to this Directorate. Moreover, fresh lease agreement with the Administrator/Director Anti Narcotics Force Rawalpindi/Islamabad be made within one month.*

*Assistant Director (Assets)  
(Siddique Gohar Khan).*

8. Perusal of record further reveals that earlier notice under section 31 of the Prevention of Smuggling Act, 1977 was issued on 24.07.1995 and at that time the owner of the suit property was one Khalid Latif and the said property was not transferred to anybody else and even not in the name of the present petitioner. It is evident from record that the petitioner had purchased the disputed property through attorney of real owner namely, Khalid Latif. The suit property was frozen vide Notification, dated 24.07.1995 and, thereafter, the suit property was confiscated vide judgment, dated 30.08.2003 passed by the learned Judge Special Court Customs and was forfeited in favour of the government. It is not denied that the suit property was purchased by the present petitioner much later i.e. vide sale deed, dated 29.12.1996, which clearly depicts that the petitioner had purchased the proprietary rights of the suit property after the issuance of notification. It is the stance of the petitioner that he had acquired ownership leasehold rights as bonafide purchaser. It is an admitted position that sale transaction was made by the petitioner after 24.07.1995 when notice under section 31 of the Act of 1977 had already been issued and served on the real owner namely, Khalid Latif. The present petitioner had not joined the proceedings before the learned Special Judge nor had challenged the earlier notice, dated 24.07.1995. It has come to the surface that the petitioner had no interest whatsoever in respect of the suit property till 24.07.1995 and his transaction was much later. The appeal of Khalid Latif from whom the present petitioner had purchased the suit property was dismissed by the learned Lahore High Court, Rawalpindi Bench, Rawalpindi vide order, dated 08.04.2008 and the

same had attained finality as the appeal filed before the apex Supreme Court was also dismissed vide order, dated 03.04.2009. The petitioner had no locus standi to challenge the proceedings. The notice, dated 01.05.2010 was issued after the suit property forfeited in favour of the Government. The validity of earlier notice issued in the year 1995 under section 31 of the Act, 1977 was not open to be challenged by the petitioner in the light of the above discussion. The learned Special Judge vide order, dated 12.07.2010 has rightly observed that all the transfers were void and had no effect on the orders of forfeiture of the property. It is settled that where the law prescribes an act to be done in a particular manner then it ought to be done in that manner alone. Reliance in this behalf is placed on the case titled as "*Muhammad Anwar and others vs. Mst. Ilyas Begum and others*" [PLD 2013 Supreme Court 255]. Both the Courts below have given concurrent findings, which do not suffer from misreading or non-reading or a case of misapplication of law is made out.

9. There is no cavil to the proposition that the scope of powers under section 115 of the CPC is of a limited nature, particularly when the findings of two Courts are concurrent. However, the eventualities which would justify interference are (i) where there is misreading and non-reading of evidence on the record which is conspicuous, (ii) where there is error in the exercise of jurisdiction, (iii) the courts have acted in the exercise of their jurisdiction illegally or with material irregularity, and (iv) the findings of fact recorded are without considering documents and record in their true prospective. Reliance is placed on case of "*Nazim-ud-Din and others Versus Sheikh Zia-ul-*

*Qamar and others*” [2016 SCMR 24]. At the same time it is also settled law as held by the august Supreme Court in the case titled “*Shahzada Muhammad Umar Beg versus Sultan Mahmood Khan and another*” [PLD 1970 S.C. 139], that the power vested in this Court under Section 115 of C.P.C. is of limited jurisdiction and is primarily intended for correcting errors made by subordinate Courts in exercise of their jurisdiction and discretionary orders of subordinate Courts cannot be interfered with unless found fanciful and arbitrary.

10. In view of the above, the petitioner has failed to point out any irregularity or illegality or jurisdictional infirmity calling for interference by this Court under section 115 CPC.

11. Hence, the instant Civil Revision is devoid of merits and is therefore, accordingly **dismissed**.

**(GHULAM AZAM QAMBRANI)**  
**JUDGE**

ANNOUNCED IN OPEN COURT, ON 06<sup>th</sup> DAY OF APRIL, 2020.

**JUDGE**

*“Rana.M.If”*