

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. CR. 349-2014

Titled Dr Arif Hayat Vs Sher Mohammed

- (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 the affirmative Separate confidential note may be Sent to the Registrar drawing his Attention to the particular aspect).

[Signature]
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.

ORDER SHEET.

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

Civil Revision No.349/2014

Dr. Arif Hayat
versus
Sher Muhammad etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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02.04.2015	Mr. Zulfiqar Ali Abbasi, Advocate for the petitioner. Syed Aqeel Abbas Kazmi, Advocate for respondents No.1 to 8. Sardar Mehtab Ahmed Khan, Advocate for respondent No.9.
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NOOR-UL-HAQ N. QURESHI.J: Through the instant civil revision, the petitioner has prayed for setting aside impugned order dated 29.10.2014 passed by the learned Civil Judge 1st Class, Islamabad (west) and for consolidation of three cases pending between the parties.

2. Brief facts of the case are that the petitioner has filed a suit for specific performance, mandatory and permanent injunction before the trial court on 15.02.2014 on the basis of lease agreement between the parties regarding suit property, in which application under Order 39 Rule 1,2 CPC was accepted vide order dated 25.06.2014. As a counterblast, respondents have also filed two ejectment petitions on 12.03.2014. Above said three cases are regarding the same property and fixed for evidence of the parties. The petitioner filed



application under section 151 CPC before learned trial court for consolidation of said cases which was dismissed by the learned trial court vide impugned order. Hence, this civil revision.

3. Learned counsel for the petitioner has argued that as the said cases are regarding same property and between the same parties, therefore, to avoid conflicting judgments, it is necessary to consolidate the cases but learned trial court while dismissing the application for consolidation of cases has failed to exercise its jurisdiction hence, order is against law, facts and is not sustainable in the eye of law.

4. Learned counsel appearing on behalf of respondents has argued that jurisdiction vested in the Civil Court and the Rent Controller is entirely different. The Rent Controller exercises quasi-judicial jurisdiction. In such capacity, he is free to evolve his own procedure for deciding the application and not bound to follow the procedure laid down under CPC to conduct inquiry and the Civil Court while deciding suit has to follow procedural law as provided by CPC, therefore, consolidation of ejection petition as well as the civil suit filed by both the parties regarding same property is not permitted by law. The civil suit may take a sufficient period to decide whereas limited scope for deciding within such period is provided by IRRO 2001. In support of his contentions, learned

counsel has relied upon case law reported in 1996 MLD 265 (Lahore) and PLD 2012 Lahore 490.

5. Arguments heard, record perused.

6. Learned counsel for both the parties have submitted case law mostly pertaining to the Province of Punjab in support of their arguments. Referred case law shows the contrary views drawn by the Superior Courts. I have gone through the record and referred case law. With due reverence I am not inclined to accept the arguments duly supported by referred case law i.e PLD 1999 SC 1101 titled "*Haji Jumma Khan vs Haji Zarin Khan*". Though the litigation is of similar type but the points discussed are altogether different, which have no nexus with the present case. The law developed since centuries to root out the miseries and not to increase the same.

7. For the sack of arguments, if in the instant case ejection petition is allowed and as a result tenant is thrown out in execution of order passed by learned rent controller, there would be a chain of litigation as a consequence whereof and civil litigation would be expensive exercise for the parties. There might be a question of prestige arose between the parties.

8. In the instant case, petitioner seeks relief by filing suit for specific performance of contract. Of



course it was filed after receiving of eviction notice issued by the landlord but yet the controversy exists with regard to execution of agreement to sell which is required to be decided ultimately. There is also apprehension of conflict findings in the cases pending between the parties on similar issues. This is a preliminary stage of the matters, therefore, all the three matters can be decided together by consolidation.

9. With regard to procedure and powers of Rent Control as well as powers vested in Civil Court, I would like to refer inherent jurisdiction of Civil Court and powers of Rent Controller provided by section 24 of IRRO 2001.

10. Before parting with such issue, I would like to emphasize that there is no other provision providing a specific procedure for proceeding a rent case whatever relief claimed therein. A procedure with regard to powers defined under sections 24 and 25 of the said ordinance depicts clear picture of exercise powers by the Rent Controller as the same vested in Civil Court under CPC 1908, trying a suit or executing a decree is a condition attached thereto for adopting such procedure in the matters namely:-

a. Summoning and enforcing the attendance of any person and examining him on oath;

b. Compelling the discovery and production of any document and other material evidence and



- c. Issuing a commission for the examination of witnesses.

Further Subsection 5 of Section 25 provides status of Controller who shall be deemed to be a Civil Court for the purposes of Sections 480 and 482 Cr.PC alongwith other powers with regard to service of summons and production of witnesses. Since, no procedure is provided by the rent laws and to some extent powers vested in Civil Court can be exercised, therefore deemingly, there is no bar provided by rent laws to proceed a rent application in the peculiar circumstances by adopting procedure laid down under CPC.

11. So far the rent laws are concern, the proceedings frequently initiated under the procedure laid down in CPC, it would redundant the powers exercisable by Rent Controller under peculiar circumstances.

12. No Civil Court may act as rent controller while proceeding such cases. The trial in the rent application is a sort of inquiry affording the parties an opportunity of hearing. The other procedure laid down in the IRRO 2001 is summoning and enforcing the attendance of the witnesses and examining them on oath. Compelling the discovery and production of documents and other material evidence or issuing a commission for the examination of witnesses are

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powers already exercisable by the Civil Court. Besides those if any other power is exercised while deciding rent application for which no bar is provided by law would not make the rent ordinance redundant. Scope of rent laws is not deemed to be inadequate if the civil suit is tried together with the rent application.

13. In my view the order passed by learned trial court is not tenable under the law, same is therefore set aside. Instant civil revision is allowed as a result application for consolidation of cases filed by the petitioner is accepted. Learned trial court shall proceed with all the three cases being consolidated to each other and commence the proceedings from the stage where the same were left.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Imran

Approved for reporting.

JUDGE

*Blue Slip added
A. W. Shah*

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