

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. C.R. 22 — 2012.

Nusrat Batool.

D.G.

NARE.

Titled

Vs

(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).

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. **22 of 2012**,
 Nusrat Batool
 Versus
 DG, NARC 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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04	20-03-2012:	Mr. Ali Murad Baloch, Advocate for the petitioner, Mr. Fiaz Ahmad A Jandran, Advocate for respondents.
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MUHAMMAD ANWAR KHAN KASI, J:

This petition has challenged the orders dated 12-07-2011 and 23-2-2012, passed by learned Civil Judge & learned ADJ Islamabad respectively, whereby suit of the petitioner/plaintiff was disposed of with observation that after her termination from service on 21-5-2011, she is entitled to retain the official accommodation for two months till 20-7-2011 and till then she may not be forcibly dispossessed. This order was upheld by the learned Appellate Court vide order dated 23-2-2012 by observing that the petitioner is living as 'illegal occupant' in the suit quarter after 21-7-2011.

2- Learned counsel for the petitioner submits that the impugned order for disposal of the suit is absolutely illegal and unlawful because order has been passed without touching merits of the case. It is next submitted that the suit was accompanied with an application under Order XXXIX, Rules 1&2-CPC which was not decided at all and the learned Appellate Court also failed to appreciate the law and facts of the case.

3- Conversely, learned counsel for the respondent contested the petition on the ground that the petitioner is neither depositing the rent nor her occupation is legal after termination of services. It is further submitted that the learned Trial Court granted her two months' time and even after ten

months, the said house has not been vacated. It has also been contended that Court has inherent powers under section 151 CPC to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the Court and that concurrent findings advanced by courts below, were just and had been passed in a lawful manner, therefore, no interest in exercise of revision jurisdiction is called for in the concurrent findings of the courts below as the same did not suffer from misreading or non reading of evidence and there was no illegality or material irregularity in the said findings. In support of his contentions, the learned counsel relied upon case laws cited **2012 CLC 229** and **2012 CLC 246**.

4- I have considered the arguments advanced by both the sides, gone through the material annexed with the petition and also perused the law on the subject.

5- Record reveals that the civil suit for declaration and permanent injunction for the first time was put before the learned Civil Judge Islamabad, who heard preliminary arguments and after perusal of file, that very day disposed of the suit with the observation that the petitioner/plaintiff may retain the possession till 20-07-2011.

6- There is a prescribed procedure in Civil Procedure Code for disposal of civil suits which can either be dismissed after final adjudication or can be rejected under Order VII, Rule 11 CPC, but the disposal of civil suit with observation finds no mention in the law. The learned Civil Judge could have rejected the plaint under Order VII, Rule 11 CPC but the disposal of the suit with observation is an order without jurisdiction and without properly applying the judicial mind. The learned Trial Court is under duty to examine the plaint for the purpose of determining whether the plaint should be returned under Order VII, Rule 10 CPC or rejected under Order VII, Rule 11 CPC. On this view, I am fortified by case law cited as **2003 YLR 2224** and **2000**



CLC 1363. At the same time, the order of rejection should be a speaking order and a civil suit cannot be disposed of by writing a few lines only. (Ref: 2003 MLD 109). The Appellate Court also failed to consider this aspect of the case and without realizing that plaint was neither rejected nor dismissed, concluded that the learned Trial Court had passed a right order. The Civil Courts are bound to follow the procedure of CPC and any deviation resulting in gross irregularity would tantamount to the violation of law.

7- The upshot of above discussion is that the learned Trial Court as well as Appellate Court failed to appreciate the law on the subject while passing the impugned orders. Consequently, both the orders dated 12-07-2011 and 23-2-2012 are set aside with direction to the learned Trial Court to proceed with the case strictly by following the procedure enunciated in Civil Procedure Code. The parties shall appear there on 30-03-2012 for further proceedings where they will have ample opportunity to adduce their respective arguments and objections.

8- Petition allowed in above terms with no orders as to costs.

(MUHAMMAD ANWAR KHAN KASI)
JUDGE

M. Suhail

APPROVED FOR REPORTING