

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Civil Revision No.391 of 2015
Mst. Kausar bibi
Versus
Islamabad Electric Supply Company
Through its Chairman and others.

Date of Decision: 14.02.2020.
Petitioner by: Mr. Muhammad Abdullah Awan, Advocate.
Respondents by: Mr. Muhammad Asif Khan, Advocate.

FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant Civil Revision Petition, petitioner assails Judgments and Decrees dated 06.6.2015 & 13.6.2015 passed by learned Civil Judge 1st Class and learned Additional District Judge-VII, Islamabad (West), whereby her suit for declaration & permanent injunction was dismissed being barred by law and appeal met the same fate.

2. Precisely, relevant facts for the disposal of instant civil revision petition are that petitioner filed a suit for declaration & permanent injunction on 10.4.2015 seeking decree to the effect that her husband died while in service on account of injuries and she is entitled to retain official accommodation for a period of five years; respondents filed written statement wherein objection was raised on the maintainability of the suit, as petitioner/ plaintiff concealed material facts and filing of earlier suit besides dismissal of his revision petition up to the High Court; that learned Trial Court, after hearing arguments on the maintainability, dismissed the suit vide Judgment dated 6.6.2015. Petitioner assailed that Judgment in appeal but it was also dismissed vide Judgment dated 13.6.2015, hence present civil revision petition.

3. Learned counsel for the petitioner argued that both the learned Courts acted illegally while construing the legal provisions; that earlier suit was got withdrawn with permission to file fresh suit; that filing of second suit in presence of first suit does not attract Order XXIII Rule 1 CPC; that provisions of Order VII Rule 11 CPC have been incorrectly applied by the two Courts.

4. Learned counsel further asserted that as per policy, the widow of a deceased employee, who died due to service injuries, can retain the official accommodation for five years but both the learned Courts non-suited the petitioner at the inception without recognizing principle of natural justice and fair trial. Learned counsel placed reliance upon case laws reported as 2006 CLC 1462; PLD 1983 SC 344; 2005 YLR 2882 and 2006 CLC 694.

5. On the other hand, learned counsel for respondents-IESCO argued that second suit on the same subject with same cause of action is legally barred; that second suit of the petitioner was barred under Sub Rule 3 of Rule 1 of Order XXIII CPC as first suit was simply withdrawn without permission to file fresh suit and that the concurrent findings arrived at by the two learned Courts, in absence of any illegality or jurisdictional defect, cannot be interfered with.

6. Heard the learned counsel for the parties and perused the record with their able assistance.

7. The facts derived from the impugned judgments, arguments of learned counsel for the parties and material annexed with the revision petition reveal that husband of the petitioner Muhammad Bashir, Line-Forman-II died on 10.01.2012 while in service. Petitioner, widow of said Muhammad Bashir, in order to retain possession of official accommodation, filed suit for declaration and permanent injunction on 07.4.2014 wherein the learned Trial Court

dismissed application under Order XXXIX Rules 1&2 CPC vide order dated 16.01.2015. Being dissatisfied with the said order, petitioner filed an appeal, which was also dismissed by the learned Appellate Court vide order dated 30.3.2015 while her Civil Revision before this Court met the same fate vide order dated 03.4.2015. Petitioner when confronted with these facts regarding first round of litigation, where his interim injunction petition was dismissed up to this Court he admitted the position and also conceded that he did not annex a single document regarding said litigation with this Civil Revision. This is a civil revision petition and petitioner was under an obligation to annex all those documents. This fact suggests dismissal of instant civil revision petition. It is matter of record that petitioner got withdrawn first suit from the Court of learned Civil Judge Islamabad (West) vide order dated 11.4.2015. The said withdrawal was unconditional. Surprisingly, a day before withdrawal of the first suit, petitioner had instituted second suit on 10.4.2015, without mentioning therein the fact of pendency of first suit.

8. In addition, it is also noticed that the petitioner in her second suit did not mention the fact of pendency of first suit and the reasons of filing the same in presence of the latter. It appears that in order to enjoy maximum time period, petitioner had been attempting to get an injunctive order and when ultimately failed, filed the second suit without mentioning the pendency of first one. On the day of filing second suit, ad-interim injunction was issued in her favour on 10.4.2015 and ultimately on having knowledge of the earlier proceedings, the learned Trial Court heard the arguments on the point of maintainability raised by the respondents and dismissed the suit being barred by law. The application for withdrawal of first suit is also did not mention the filing of the second suit, rather permission was sought to file a fresh suit, which fact,

establishes that the petitioner had concealed the fact of filing of second suit at the time of withdrawal of the first suit. Even permission was not allowed to file fresh suit.

9. It has been the claim of the petitioner that under the policy in vogue, she can retain the official accommodation being wife of late employee who died in service as her case is covered under the policy meant for employees who lost their life because of service injury. This assertion did not find mention in the suit filed on 10.4.2015 as in Para 5 of the said suit, it is mentioned that the husband of plaintiff died on 10.01.2012 when he was on routine duty, hence the plaintiff is entitled to retain the accommodation for five years. This assertion itself negates the claim of the petitioner that her case in the second suit was to the effect that because of her husband died due to service injury, therefore, she is entitled to retain possession of official accommodation for five years. Her case, as a matter of fact, is covered under clause (a) of the Office Order dated 12.6.2007 issued by WAPDA-respondent whereby widow of an employee who died during service held entitled to retain official accommodation already in possession for a period of two years after the death of husband because rules of respondent department are applicable to the petitioner, being employee of IESCO and not of civil servants.

10. Admittedly, husband of the petitioner died on 10.01.2012, due to cardiac arrest at village Niazian, Union Council Rawat, Islamabad, as reveals through para-2 (i) of the written statement filed by the respondent department in suit for declaration and permanent injunction; the death certificate issued by the PIMS also did not support the version of the petitioner that her husband died because of service injuries; she had been in possession of the suit accommodation till 08.6.2015 i.e. for about seven months beyond the entitlement of two years. The possession of the accommodation has been

taken over by the respondent department on 08.6.2015, thus, the claim of the petitioner has also become redundant.

11. Having examined the case, from all angles, it is concluded that both the learned Courts committed no illegality or material irregularity while passing the impugned judgments. The concurrent findings arrived at by the two learned Courts do not call for any interference. Consequently, revision petition fails and is accordingly dismissed.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Suhail