

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Regular First Appeal No.104/2014
Muhammad Zafar Malik, etc.
Versus
Chairman, CDA, Islamabad, etc.

Appellants by: Mr. Muhammad Akram Malik, Advocate,
Respondents by: Mr. Shahid Murtaza Bukhari, Advocate,
Date of Hearing: 11.08.2020.

FIAZ AHMAD ANJUM JANDRAN, J.- Through this judgment we propose to decide the instant Regular First Appeal which emanates from the *ex-parte* judgment & decree dated 12.07.2014, passed by the learned Civil Judge 1st Class, Islamabad-West, whereby suit for recovery of damages and compensation filed by the appellants was dismissed.

2. The facts, relevant for the disposal of the instant appeal, are that in respect of First Floor of House No.457, Street No.15, Shahzad Town, Islamabad, appellants entered into a lease agreement on rental basis for three years on 01.04.2011 with one Sheikh Irshad and when they took over the possession of the said house, it came to their knowledge that sewerage contaminated and polluted water is pouring into the bathrooms and kitchen of the house. The appellants approached Director Water Supply, C.D.A for redressal of their grievance/repair of sewerage lines passing in front of said house but borne no fruit and appellants were constrained to fetch water from far flung places for domestic consumption for three months. Non-repairing of sewerage lines by the respondents resulted into termination of lease agreement and vacation of said house before expiry of lease period. Thereafter, appellants filed suit for recovery of damages and compensation against the respondents which was dismissed by the learned Trial Court.

3. The appellant contends that the averments were duly affirmed through an affidavit which have not been rebutted by the respondents by filing counter affidavit; that oral agreement between the appellants and the landlord is an admitted fact and the local commission, in its report, confirmed that the landlord had no allotment letter, site plan or completion certificate; that no coercive action was taken against the landlord regarding illegal constructions; that the factum of lodging a complaint to the respondents for the repair of damaged sewerage lines is an admitted fact and the claim of physical and mental agony and injury to the appellant is flouting on record; that the appellant was not provided with an opportunity to make good the deficiency regarding affixation of requisite court fee. Therefore, the impugned judgment and decree is liable to be set aside. Reliance is placed upon case laws reported as PLD 2003 Lahore 104 and 1991 CLC Note 347 [Karachi].

4. On the other hand, learned counsel for the respondents-C.D.A contends that a vague complaint, if any, had been made basis to seek compensation; that the main grievance of the appellant had been against the private defendant/landlord against whom he withdrew the suit and pressed the suit against the officials of the C.D.A on the basis of an oral complaint which is not maintainable for having the relief of damages particularly without mentioning the antecedents of the persons who committed wrong with the appellant, therefore, in absence of any cause of action, the suit was rightly dismissed which does not call for any interference. Reliance is placed upon case laws reported as 1986 CLC 2987 [Quetta], 2005 CLD 99 [Lahore], 2008 CLD 1343 [Karachi], 2000 CLC 215 [Lahore], 2006 MLD 488 [Lahore].

5. We have heard the learned counsels for the parties and examined the record with their able assistance.

6. In order to seek relief in terms of compensation, it is not only incumbent upon the plaintiff to explain the same with details but also with certainty and conformity of the action, made basis to claim such damages. The facts of the present case, gleaned out of record, are that the appellants got the subject premises on rent from the private defendant on the basis of lease agreement and then noticed defect in water supply and the drainage system of the house. The appellant/plaintiff opted to make a compromise with the private defendant/landlord and insisted to sue the respondents-C.D.A for claiming certain compensation which has not even been explained in the plaint. In principle, the defect either in construction or in the drainage, as asserted, is attributed to the owner of the property with whom the appellant had effected compromise. It is his own case that the constructions were not only defective but were also without sanction of the respondents/C.D.A, therefore, instead of seeking remedy against the landlord, the appellants started litigation with the official respondents. It is not the case of appellants that any of the officials of the respondent refused to perform his duty or obligation which resulted in any monetary loss to them. The oral complaint, if any, had been made basis to seek compensation.

7. Moreover, it was also not the case of appellants that against the alleged inaction on the part of the official respondents, they moved their high ups or agitated their grievance elsewhere. The appellant claimed damages to the tune of Rs.10,000,000/- but did not affix the requisite court fee and on this score also, the plaint was liable to be rejected.

8. The case laws referred by the learned counsel for the appellant do not extend any help due to having distinct facts and circumstances.

9. In view of above, the instant appeal being devoid of merits is accordingly dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

Announced in open Court on 07.09.2020

JUDGE

JUDGE