

HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD

C.P. No.S-755 of 2022
[Ghulam Muhammad Vs. Syed Zahir Shah & others]

Mr. Aghis-u-Salam Tahirzada, Advocate for petitioner.
Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.
Mr. Ashfaq Ahmed Lanjar, Advocate for respondent No.1 is called absent
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Date of hearing and Order: **25.11.2022**

ORDER

ADNAN-UL-KARIM MEMON, J. Petitioner has called in question the legality of order dated 24.08.2021 passed by learned Additional District Judge-II / MCAC Mirpurkhas whereby Civil Revision Application No. Nil of 2021 was converted into Rent Appeal No.4 of 2021, inter alia on the ground that respondent No.1 has lost his case upto Revisional Stage; now the proceedings in the shape of Revision Application under Section 115 CPC are not maintainable in the matter of rent which are to be proceeded under Sindh Rented Premises Ordinance and conversion of Revision Application into Rent Appeal by the learned Additional District Mirpurkhas is illegal and without any rhyme and reason.

2. I have noticed that this petition was presented before this court on 03.10.2022; that upon notice Mr. Ashfaq Ahmed Lanjar, Advocate filed vakalatnama on behalf of respondent No.1 on 11.11.2022 and requested for time for preparation; therefore, at his request the matter was adjourned to 14.11.2022 to be taken up at 11:00 a.m. that again on 14.11.2022 counsel for respondent No.1 requested for time and at his request the matter was adjourned to 25.11.2022; that today he is called absent without any intimation. In such circumstances, this Court is left with no option but to hear the case on the basis of material available on record and with the assistance of counsel for petitioner and learned Additional Advocate General, Sindh.

3. Brief facts of the case are that initially petitioner filed Rent Application No. 04 of 2012 which was allowed vide order dated 31.8.2015; that respondent No.1 also filed F.C. Suit No. 112 of 2013 for Specific Performance of Contract which was dismissed vide Judgment dated 28.8.2015; that against the said Judgment he preferred C.A. No. 29 of 2015 before learned District & Sessions Judge, Mirpurkhas which was also dismissed vide Judgment dated 1.12.2016 and against which he filed R.A. No. 01 of 2017 before this Court which was pending. That subsequently respondent No.1 also filed Rent Appeal against the order passed in Rent Application No. 04 of 2015 before learned District & Sessions Judge Mirpurkhas who also dismissed the same vide order dated 1.12.2016 and against the said dismissal he

preferred CP No. 01 of 2017 which was also pending; therefore, this court vide common Judgment dated 26.3.2021 dismissed the constitutional petition as well as Civil Revision Application vide Judgment dated 26.3.2021; that against consolidated Judgment, respondent No.1 approached Honourable Supreme Court in CP No. 569-K of 2021 wherein Honourable Supreme Court while remanding the case directed this court to decide the revision afresh through speaking order; that subsequently petitioner filed Rent Execution Application No.01 of 2021 for execution of order dated 7.8.2021 passed in Rent Application No. 4 of 2013 which was allowed vide order dated 7.8.2021; against which the respondent No.1 preferred Civil Revision Application before learned District Judge Mirpurkhas who vide order dated 24.8.2021 converted the same into Rent Appeal No. 04 of 2021; that rent proceedings arising out of Rent Application No.04 of 2013 have already culminated in favor of petitioner directing respondent No.1 to vacate the subject premises and execution application has also been allowed vide order dated 07.08.2021 and respondent No.1 being aggrieved by and dissatisfied with the aforesaid decision preferred Civil Revision Application which was converted into FRA No. 4 of 2021 vide order dated 24.08.2021 is without lawful justification as the revision application under Section 115 CPC is not maintainable against the order dated 07.08.2021 passed in rent proceedings; that learned Revisional Court was not empowered to convert the revision application into an appeal, though the Suit of respondent No.1 has already been dismissed up to revisional stage, thus this petition is liable to be allowed and the proceedings arising out of Rent proceedings and subsequent conversion into appeal are Coram non-judice; however, after making such submissions at length, he lastly prayed for direction to the appellate court to decide FRA No. Nil of 2021 on merits including maintainability in respect of conversion of revision application into FRA, within a reasonable time.

4. The proposal put forward by learned counsel for the petitioner seems to be reasonable; since there is no serious objection on the part of respondent, except that the matter arising out of civil revision earlier decided by this court is pending before Honourable Supreme Court. Since no prejudice will be caused to the parties if the matter between the parties is decided on merits pending before learned appellate court arising out of rent proceedings; therefore, without touching merits of the case, learned Additional District Judge Mirpurkhas is directed to decide FRA No. 4 of 2021 pending before him within two weeks.

JUDGE

Muhammad Danish