

**ORDER SHEET**  
**THE HIGH COURT OF SINDH, KARACHI**  
C.P. No.D-2733 of 2023

Dated: \_\_\_\_\_ Order with signature of Judge(s)

1. For orders on Misc. No.13748/2023.
2. For orders as to maintainability of the Petition.

Yousuf Ali Sayeed, J.  
Mohammad Abdur Rahman, J

Date of hearing : 06.06.2023:-

Petitioner : Muhammad Shehzad Mirza through Syed Safdar Ali, Advocate.

Respondents: Xth Additional District Judge Karachi (East) & Others.

**ORDER**

**Mohammad Abdur Rahman, J.** This Petition has been presented by the Petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as against the orders dated 2 September 2022 passed in Execution No. 09 of 2021 emanating from a Judgment dated 2 September 2022 and Decree dated 6 September 2021 each passed by the Xth Additional District Judge Karachi East in Summary Suit No. 84 of 2022.

2. The Petitioner contends that a Summary Suit bearing No. 84 of 2022 was presented under Rule 2 of Order XXXVII of the Code of Civil Procedure, 1908 by the Respondent No. 2 before the Xth Additional District Judge Karachi East as against him. The Summary Suit was contested by the Petitioner who filed an Application for Leave To Defend under Rule 3 of Order XXXVII of the Code of Civil Procedure, 1908 and which application was dismissed by the Xth Additional District Judge Karachi East on 2 September 2021 and who subsequently issued a decree on 6 September 2022.

3. Admittedly no action was taken by the Petitioner to assail either the Judgment or the Decree and which was thereafter executed by the Xth

Additional District Judge Karachi East in Execution Application No. 09 of 2021 on 2 September 2022.

4. At this belated stage, the Petitioner has on 31 May 2023 presented this Petition alleging that the Xth Additional District Judge Karachi East has acted illegally in granting Execution Application No. 09 of 2021 on 2 September 2022 as he had not been properly served.

5. We confronted the Petitioner as to the maintainability of this Petition keeping in mind that he neither preferred a revision or any appeal as against either the judgment dated 2 September 2021 or the Decree dated 6 September 2022 passed in Summary Suit No. 84 of 2022 or for that matter as against the order dated 2 September 2022 passed in Execution No 09 of 2021 each passed by the Xth Additional District Judge Karachi East. The Counsel for the Petitioner, to his credit, candidly replied that he had not preferred either a Civil Revision or an Appeal as it was overlooked by the previous counsel for the Petitioner and as all the other remedies that were available to him were barred by time, he has chosen to institute this Petition.

6. We have heard the learned counsel for the Petitioner and have perused the record. It is well settled that where an alternative efficacious remedy is available in the nature of an appeal or a Civil Revision it is not for us to enforce those remedies which admittedly the Petitioner has not availed in our jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The Supreme Court of Pakistan in **Allah Ditta vs. Malik Ijaz Hussain**<sup>1</sup> while hearing an appeal from an order of the Lahore High Court dismissing a petition as not being maintainable on account of the failure on the part of the Petitioner to file a Revision held that:<sup>2</sup>

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<sup>1</sup> 1986 SCMR 959

<sup>2</sup> *Ibid* at pg. 961-962

“ ... Coming to the case of the petitioners in Civil Petition No. 469 of 1984 (Allah Ditta etc.), it transpires that they did not file any revision petition against the order of the Additional Chief Land Commissioner dated 30-12-1979 before the Federal Land Commission but decided to challenge the said Order of the Additional Chief Land commissioner directly before the High Court by a writ petition (namely, W.P. No. 135 of 1981). The said writ petition was dismissed by the High Court on the short ground that the petitioners had not exhausted the remedy of revision available to them by approaching the Federal Land Commission and their failure to do so disentitled them to invoke the extraordinary writ jurisdiction of the High Court? ...

... Accordingly we are of the opinion that if in any case the High Court considers that a writ petition should not be entertained on account of the failure of an aggrieved party to avail of another adequate remedy such a decision not only entirely legitimate but it is indeed in furtherance of the intendment of Article 199 of the Constitution. In fact in the present case, since the case was remanded by the Federal Land Commission to the Chief Land Commissioner for decision afresh in the light of the direction given by it, it was all the more appropriate that a revision petition should have been filed before the said Authority to enable it to verify if its directions had indeed been carried out. “

7. Admittedly the Petitioner had remedies available to him which he did not avail. To come at this belated stage and state that this Petition should be entertained after he has, on account of his own omissions, been barred from preferring those remedies is barely a ground for maintaining a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. We are therefore clear that this Petition is not maintainable as the Petitioner had an alternative remedy that he did not avail and had dismissed the same on 6 June 2023 and these are the reasons for that order of dismissal.

JUDGE

Nasir PS.

JUDGE