

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.
C.P.No.S-339 of 2023

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| DATE | ORDER WITH SIGNATURE OF JUDGE |
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For orders on MA- 1721 of 2023
For orders on office objection
For orders on MA- 1328 of 2023
For hearing of main case.

06-11-2023

Mr. Anis-ur-Rehman, Advocate for petitioners.

Rent application No.174 of 2021 was allowed vide order dated 05.04.2021 by the 8th Senior Civil Judge/Rent Controller, Hyderabad. First Rent Appeal No.16 of 2023 was dismissed there against vide judgment dated 11.07.2023 by the 6th Additional District Judge, Hyderabad. The present petition assails the concurrent judgments on the sole premise that the evidence has not been properly appreciated by the respective forums, hence, the same may be done by this Court and the impugned judgments may be set aside.

It is observed that appeal is a creation of statute and in the absence of any such remedy being provided none can be presumed¹. Once the statutory remedial process has been exhausted, recourse to writ jurisdiction cannot be taken as a matter of right; *inter alia* as the same *prima facie* impinges upon the finality granted by statute to the judgment of the last appellate forum. Since, the appellate hierarchy has already been exhausted the only issue that could be looked in by this Court in the exercise of its writ jurisdiction is whether there is any patent illegality apparent from the orders impugned. In such regard it is observed that the learned counsel remained unable to identify any such infirmity in the respective judgments. In so far as the plea for *de novo* appreciation of evidence is concerned, it would suffice to observe that writ jurisdiction is not an amenable forum in such regard².

It is apparent that the concurrent findings have been rendered in appreciation of the evidence and no infirmity could be identified in the orders impugned, nor could it be demonstrated that the conclusion drawn could not have been rested upon the rationale relied upon. A recent judgment of the High Court in the case of *Ali Tasleem*³ has also deprecated the tendency to utilize the writ jurisdiction of this Court as a subsequent unsanctioned appellate forum in rent matters *inter alia* in the following terms:

“It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned... Insofar as the plea for *de novo* appreciation of evidence is concerned, it would suffice to observe that writ jurisdiction is not an amenable forum in such regard. In cases wherein the

¹ Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

² *2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415*.

³ Per *Muhammad Junaid Ghaffar J* in *Ali Tasleem vs. Court of IXth ADJ Karachi East (CP S 985 of 2023)*.

legislature has provided only one appeal as a remedy, like family and rent cases, it has been the consistent view of the Apex Court, that invoking of Constitutional jurisdiction in such matters as a matter of right or further appeal is not a correct approach.”

In view of the foregoing, this petition is found to be misconceived and even otherwise devoid of merit, hence, dismissed *in limine*, while granting urgency, along with listed applications.

Judge

Ahmed/Pa