

IN THE HIGH COURT OF SINDH AT HYDERABAD

CP S-521 of 2023 : Muhammad Asghar Khan Attorney
Vs. Muhammad Atique & Others

For the petitioner : Mr. Muhammad Adeel Qureshi, Advocate

Date/s of hearing : 18.12.2023.

Date of announcement : 18.12.2023.

ORDER

Agha Faisal, J. Briefly stated, Rent Application 160/2021 was filed against the petitioner and the same was allowed vide order dated 13.8.2022. It is clearly manifest from the relevant pleadings, and the determinant order, that the singular applicant had filed rent application against the singular opponent, being present petitioner.

The petitioner assailed the impugned order in FRA 49 of 2022 before VI Additional District Judge Hyderabad. Once again, the pleadings (and determinant order) demonstrate that the petitioner filed the appeal against a singular respondent, being the applicant in the earlier proceedings. The said appeal was dismissed vide judgment dated 03.11.2023.

Admittedly, the petitioner impleaded no other person in the memorandum of appeal before the appellate Court, however, in the present petition seven additional private respondents have been impleaded. Upon specific query, learned counsel submits that privity of the petitioner was with persons other than the initial applicant, however, failed to substantiate as to why the said persons were not impleaded in the earlier proceedings.

Learned counsel was queried as to whether the same ground was taken before the trial Court and he replied in the negative. Counsel was then queried as to whether in the absence of this *admitted* afterthought the respective orders of the subordinate forums could be rested on the rationale relied upon; and he failed to articulate any cavil in such regard.

The entire crux of the petitioner's case was that the new plea, *admittedly* articulated for the first time, be considered by this court and upon inquiry / evidence findings be rendered in exercise of writ jurisdiction, since no further appeal is provided per statute.

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. It is observed that no such illegality could be identified by the petitioner's counsel and even otherwise the plea raised before this Court was never before the respective forums.

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

It is apparent that the concurrent findings have been rendered in appreciation of the evidence. It is trite law² that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. The impugned judgments are well reasoned and the learned counsel has been unable to demonstrate any manifest infirmity therein or that they 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. Speaking for the Court, *Muhammad Junaid Ghaffar J* observed as follows:

“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 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.”

Notwithstanding the foregoing, in so far as the plea for inquiry and appreciation of evidence is concerned, it would suffice to observe that writ jurisdiction is not an amenable forum in such regard⁴.

In view hereof this petition is found to be devoid of merit hence dismissed *in limine* along with pending application.

Judge

A.Rasheed/stenographer

² Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.

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

⁴ *2016 CLC 1*; *2015 PLC 45*; *2015 CLD 257*; *2011 SCMR 1990*; *2001 SCMR 574*; *PLD 2001 Supreme Court 415*.