

**IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. NO.D-734/2012

**PRESENT: MR. JUSTICE NADEEM AKHTAR, &  
MR. JUSTICE MUHAMMAD IQBAL KALHORO,**

Petitioner : Rafiq Ahmed through Mr. Irshad Ali  
Bhatti Advocate.

Respondent No.1 : Miss Sadia none present

Respondents NO.4 : through Mr. Abdul Sadiq Tanoli,  
Standing Counsel.

Date of hearing : 26.01.2015.

**ORDER**

**MUHAMMAD IQBAL KALHORO, J:** At the very outset of hearing, we asked the leaned counsel to satisfy us on the maintainability of this petition with particular reference to two civil suits earlier filed by the petitioner against same set of respondents seeking same reliefs. In reply, he stated that in suit No. 393/2010 the relief of possession with respect to the suit property was not sought for, hence it was withdrawn and subsequent suit bearing No.05/2011 was filed in the court of Sr. Civil Judge Karachi South and prayer for possession was included therein. Yet he could not offer any explanation when faced with the fact that after rejection of plaint vide order dated 21<sup>st</sup> December 2011 in the subsequent suit, the petitioner could have filed an appeal as by virtue of section 2 (2) CPC the order rejecting a plaint being a decree was appealable. In order to examine the backdrop of above questions, it is pertinent to reproduce the facts in brief. The petitioner on following reliefs has filed the instant petition:

- i. To pass an order to the effect that as per railway accommodation to officer the petitioner is entitled for the allotment of Bungalow No. 183/C, situated at Adam Railway Colony, Karachi.
- ii. To cancel the notice 09.11.2009, transfer order 1.6.2010, office order 6.9.2010.
- iii. To direct the respondent No.2,3,4 for allotment of Bungalow No. 183/C, to the petitioner and handed over the possession of the same according to the policy(sic).
- iv. To restrain the respondents their agent, employees, representatives, attorney or persons working for them or on their behalf not to pass any illegal order by misuse of power against the petitioner.
- v. Any other relief which this Hon'ble Court may be deem fit (sic).

**2.** As per averments the petitioner was Foreman (B.S. 16) working in Pakistan Railway and was posted at Railway Station Karachi. The respondent No.1/Miss Sadia, working as UDC (Upper Division Clerk) in BPS-14 under respondent No.2, was handed over the possession of quarter No.183/C, the subject property, in violation of approval granted in favour of the petitioner by the Deputy Director P & L. Subsequently the petitioner came to know that the respondent No.1 who was in lower grade had been allotted the suit quarter against the policy for allotment of railway accommodation to the officers as the suit quarter was meant only for officers working in BS- 15 and BS-16.

**3.** The respondents in their comments took exception to the maintainability of the petition by referring to the two civil suits earlier filed by the petitioner against the same respondents on the same subject matter seeking same prayers. Apart from raising objections to the maintainability of the petition, the respondents iterated that a quarter No.2221/1 at KYC through Allotment Letter No.716-W/EI/Qtrs dated 2.11.1999 was allotted to the petitioner.

4. As observed above, the learned counsel for the petitioner was specifically asked to address the court on the maintainability of the petition with particular reference to two civil suits earlier filed by the petitioner against the same respondents over the same subject matter containing the same reliefs, which he was seeking through the present petition. The learned counsel could not put forward any explanation recognized under the law saving thrusting an emphasis that the petitioner had no other remedy other than to file the petition hence it was competent. The facts presented before us through the instant petition reveal that the petitioner's plaint in the subsequent suit bearing No.05/2011 was rejected in terms of Order VII Rule 11 CPC. The order being a decree was appealable as per provisions of CPC but the petitioner instead of preferring appeal that was the proper remedy available to him under the law filed the petition in hand. In the entire memo of the petition, the petitioner did not reveal the factum of his two previous suits and their fate, which certainly imply concealment of necessary facts on his part. It was only through the objections filed by the respondents, the disclosure in respect of the civil suits was made. Having failed to obtain any relief(s) in the suits in respect of his alleged grievances the petitioner apparently abandoned his claim to the suit property by not filing any appeal against the adversarial order.

5. After hearing the learned counsel for the petitioner on the question of maintainability of this petition and perusing the record, we did not find it necessary to consider facts on merits as the same even otherwise were disputed by the contesting parties and fell beyond the scope provided under article 199 of the Constitution. Resultantly we dismissed the petition by our short order dated 26.01.2015 with no order as to cost and these are the reasons for the same.

JUDGE

Karachi  
Dated:

JUDGE