ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P. No. S-432 of 2023

DATE	**ORDER WITH SIGNATURE OF JUDGE**

1. For orders on office objections.
2. For orders on MA 1723/2023.
3. For orders on MA 1724/2023
4. For hearing on main case.

07.11.2023.

Mr. Muhammad Aamir Qureshi, Advocate for petitioner.

Rent Application No.04/2020 filed before the First Rent Controller Hyderabad and the same was allowed vide judgment dated 24.02.2023. The judgment was rested on the appreciation of evidence; *inter* alia demonstrating that a landlord and tenant relationship existed; petitioner's default was proven; resultantly the requirements for grant of such application have been complied with.

First Rent Appeal No.15/2023 was filed before the Court of 6th Additional District Judge Hyderabad and same was dismissed vide judgment dated 24.8.2023. The operative part of the judgment is reproduced herein below:

> *11. Indeed the appellant entered in the demised premises as a tenant and it is settled proposition of law that tenant always remains tenant until and unless he vacates the demise premises in capacity of tenant. Further the dispute regarding purchase of demise premises by appellant/opponent is being subjudiced before competent forum as pointed out, however, such civil litigation does not affect the rent proceedings, therefore, appellant has to pay the rent of demised premises but he failed to fulfill his liability being a tenant. Further at the trial the appellant/opponent did not come forward to put himself for cross examination through the counsel of respondent/applicant even failed to shatter the claim/evidence of respondent/applicant during cross examination, on the contrary he admitted himself to be entered into demised premises as tenant and being tenant he is duty bound to pay the monthly rent but he has committed willful default even the appellant/opponent has failed to disprove the bonafide need of respondent/applicant in respect of demised premises, thus arguments advanced by learned counsel for appellant having no force in them and the case law relied upon by him is quite distinguished with the facts and circumstances of this case, therefore, impugned judgment requires no interference of this court and the point under discussion is answered in negative".*

The petitioner has assailed the concurrent judgments in writ jurisdiction on the averment that the evidence has not been appreciated in the proper respective. Learned counsel further submits that there was no default and on the contrary consideration had been exchanged for acquisition of the property.

Heard and perused. Despite repeated queries, counsel could not demonstrate payment of rent. Perusal of memorandum of appeal filed in First Rent Appeal No.15/2023 also demonstrated that no such plea was taken before the learned appellate Court. In so far as the plea for acquisition of the property is concerned, it was submitted that the said matter is under litigation

in extraneous independent proceedings, hence, the same to be decided by the concerned court on its own merit.

It is observed that appeal is a creation of statute and in the absence of any such remedy being provided none can be presumed[1]. 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 regard[2].

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 legislature has provided only one appeal as a

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[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)*.

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* along with listed applications.

Judge

Shahid Steno