

IN THE HIGH COURT OF SINDH AT HYDERABAD

CP S-994 of 2022 : Shoukat Ali vs. Muhammad Ramzan & Others
For the petitioner : Mian Taj Muhammad Keerio, Advocate
For the respondent : Mr. Zeeshan Ahmed Memon, Advocate
Mr. Rafique Ahmed Dahri, AAG
Date/s of hearing : 01.12.2023.
Date of announcement : 01.12.2023.

ORDER

Agha Faisal, J. This petition challenges concurrent findings rendered against the petitioner in the rent jurisdiction. Briefly stated, Rent Application 2 of 2021 was filed before the Rent Controller Badin and allowed vide order dated 14.09.2022 *inter alia* on the ground of default. Rent Appeal No.12 of 2022 was filed thereafter, however, same was dismissed vide judgment dated 26.11.2022 rendered by the District Judge Badin.

Learned counsel for petitioner submits that since there is no further provision of appeal under the statute, hence, this writ petition. The only ground invoked is that some subsequent agreement (*admittedly* alien to the file / record), between the parties, was not duly appreciated by the respective forums. Learned counsel for respondent controverts the findings and submits that they are contrary to the proven facts.

Heard and perused. It is admitted that the record relied upon in the respective judgments is accurate and no cavil is articulated in respect of the relevant findings being rightly rested thereupon. The *only* plea is for evidence regarding the purported subsequent agreement to be led / evaluated herein. Upon query, it is admitted that the said agreement or copy thereof has not even been placed on record.

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.

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

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

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*.

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 it 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 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 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 regard⁴.

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

Judge

A.Rasheed/stenographer

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.