Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

ICA No. 01 of 2021

Abdul Rasheed, etc.
Vs
Ishtiaq Hussain Hashmi, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.

05-01-2021. Malik Khalid Mansoor, Advocate for the appellants.

Babar Sattar, J: This Intra Court Appeal has impugned the judgment of this Court dated 21.12.2020 passed by the learned Judge-in-Chambers in W.P No. 3924 of 2020. The said writ petition was filed against an order passed by the learned Additional District Judge, Islamabad dated 01.10.2020 wherein the judgment and decree dated 30.01.2020 passed in Civil Suit No. 3095/2017 against the appellants was upheld. The learned Judge-in-Chambers upheld the concurrent orders passed by the learned Court of appeal and the learned Civil Court. The appellant was aggrieved by the judgment/decree, whereby suit filed by the respondents for possession through ejectment along with recovery of arrears in relation to Shop No.6, Main Murree Road, opposite

Anjuman Faiz-ul-Islam, Faizabad, Islamabad was decreed.

2. The ICA has been filed under section 3 of the Law Reforms Ordinance, 1972 ***("Ordinance"***) and subsections (1) and (2) of section 3 of the Ordinance states the following:

> *(1). An appeal shall lie to a Bench of two or more judges of a High Court from a decree passed or final order made by single Judge of that Court in the exercise of its original civil jurisdiction.*
>
> *(2). An appeal shall also lie to a Bench of two or more Judges of High Court from an order made by a single Judge of that Court under clause (1) of the Article 199 of the Constitution of the Islamic Republic of Pakistan not being an order made under sub-paragraph (i) of paragraph (b) of that clause:*
>
> *Provided that the appeal preferred to in this sub-section shall not be available or competent if the application brought before the High Court under Article 199 arises out of any proceedings in which the law applicable provided for at least one appeal [or one revision or review] to any court, tribunal or authority against the original order.*

3. The proviso to subsection (2) of section 3 of the Ordinance clearly provides that an appeal shall not be maintainable when it impugns a judgment passed by a High Court in exercise of jurisdiction under Article 199 of the

Constitution, which, in turn, arises out of proceedings wherein the applicable law provides for one appeal to any court against the original order.

4. In the instant matter the appellant has availed his right of appeal against the judgment/decree of the learned Civil Court and was aggrieved by the appellate order of the learned Additional District Judge that led to the writ petition.

5. It is trite law that where a judgment passed by a single Bench of a High Court impugned in Intra-Court Appeal has been passed in relation to an order or proceeding against which the law provides the remedy of an appeal or review or revision, the ICA is not maintainable.

6. A Full Bench of the Hon'ble Supreme Court in the case of "**Mst. Karam Bibi and others v. Hussain Baksh"***[PLD 1984 SC 344 at 350 D]* interpreted the proviso to Section 3(2) of the Ordinance. It observed:

> *"8…The test laid down by the Legislature in the proviso is that if the law applicable to the proceedings from which the Constitutional Petit*

ion arises provides for at least one appeal against the original order, then no appeal would be competent from the order of a Single Judge in the constitutional jurisdiction to a Bench of two or more judges of the High Court."

7. The principle laid down in *Karim Bibi* was reaffirmed in "**Muhammad Adulllah vs. Deputy Settlement Commissioner, Lahore"** *[PLD 1985 SC 107]*.

8. The learned Lahore High Court in the case of "**Nishat (Chunian) Ltd. v. Federal Board of Revenue"** *[2015 PTD 1385 at 1388, 1389]* observed the following in relation to the proviso to subsection (2) of section 3 of the Ordinance:

"…the proviso would be triggered if any part of the proceedings is brought under challenge in a petition under Article 199 of the Constitution. This is all that has to be seen at the stage of the maintainability of the appeals under the Ordinance, 1972 and the only determining factor for the appellate court is to see that in case the proceedings are determined by way of an original order then an appeal is barred under the

Ordinance, 1972. It is trite principle that an appeal is a creature of a statute and has to be specifically conferred as a right and unless it is so conferred, the right of appeal cannot be presumed."

9. More recently it has been held by the Hon'ble Supreme Court in **"SME Bank Limited and others Vs. Iazhar-ul-Haq"** *[2019 SCMR 939]* that:

"We are of the view that where the proceedings from which the writ petition has arisen provided either review, revision or appeal, in terms of proviso to section 3 of the Ordinance of 1972, remedy of ICA will not be available against the judgment passed by the learned Single Judge in the writ petition."

10. This settled principle of law was reiterated by this Court in **"National Electric Power Regulatory Authority, Islamabad vs. Gujranwala Energy (Pvt) Ltd**." *[2020 CLC 173].*

11. The impugned order is not one made by the learned Judge-in-Chambers in the exercise of the Court's original jurisdiction. Instead it has been passed in the Court's constitutional jurisdiction and therefore sub-section (1) of

the section 3 of the Ordinance is also not attracted.

12. In view of the above the instant ICA is not maintainable being hit by the bar provided in the proviso to subsection (2) of section 3 of the Law Reforms Ordinance, 1972 and therefore dismissed in limine.

(AAMER FAROOQ)
JUDGE

(BABAR SATTAR)
JUDGE

Saeed.