Form No: HCJD/C-121

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Regular First Appeal No. 440 of 2021

Mst. Hameeda Parveen

Versus

Medical Superintendent PESSI Hospital, I-12, Islamabad and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(02)	10.08.2021	M/s Syed Nazim Hussain Shah and Muhammad Fazal Siddiqui, Advocates for the appellant.

Through this Regular First Appeal, the appellant has assailed the consolidated judgment and decree dated 30.06.2021, passed by learned Civil Judge 1st Class, West, Islamabad, whereby, suit filed by the appellant / plaintiff for declaration and permanent injunction was dismissed while suit of respondent No.3 for declaration and mandatory injunction was decreed.

02. Brief facts of the case are that the appellant / plaintiff filed a suit for declaration and permanent injunction against the respondents / defendants with

the averments that the appellant / plaintiff was appointed as Staff Nurse on 06.09.2016 in the Punjab Employees Social Security Institute Hospital (PESSI) I-12, Islamabad and was allotted official accommodation in the hospital bearing Flat No. 2, Block B-3, Staff Colony, PESSI Hospital, I-12 Islamabad (hereinafter called the **"Suit Flat"**) vide office order dated 10.10.2019 issued by the respondent / defendant No. 1. The suit flat was vacant prior to its allotment to the appellant / plaintiff and same was allotted to her on merit. The appellant / plaintiff was under legitimate expectancy that suit flat has been allotted to her on permanent basis. The appellant / plaintiff spent a huge amount for renovation of the suit flat in order to make it reside-able. All of sudden appellant / plaintiff was served with vacation notice on 22.02.2020 by the respondent / defendant No. 2 to vacate the suit flat till 09.03.2020. The appellant / plaintiff in response of vacation notice moved an application on 28.02.2020 to the

respondent / defendant No. 2 for withdrawal of said vacation notice which is not responded till now.

03. That the appellant / plaintiff was unable to vacate the suit flat as she was expecting a baby. She was in lawful possession of the suit flat, hence entitled to retain the same till her posting in the hospital. The appellant / plaintiff has filed a suit for declaration and permanent injunction with the prayer that she be declared lawful allottee in possession of suit flat as well as entitled to retain possession of suit flat till her posting in Punjab Employee's Social Security Institute Hospital I-12, Islamabad. The respondent No. 3 Mst. Ayesha Bano, Staff Nurse, PESSI, Hospital has also filed a suit for declaration and mandatory injunction, both the suits were consolidated, written statements were filed, issues were framed, vide impugned judgment / decree dated 30.06.2021, suit filed by the appellant / plaintiff for declaration and permanent injunction was dismissed while suit filed by the respondent

No.3 for declaration and mandatory injunction was decreed. Being aggrieved of the Judgment and decree dated 30.06.2021, the instant Regular First Appeal was filed.

04. Learned counsel for the appellant *inter-alia* contends that the impugned consolidated judgment and decree of the trial Court is against the law and facts; the learned Trial Court did not appreciate the evidence produced in its true perspective; learned trial Court did not give any weightage to the documents produced in evidence, which clearly establish the case of the appellant, and has wrongly passed the impugned judgment and decree on the basis of presumptions and assumptions; the decision of learned trial Court is contrary to law and failure to determine the real issue; findings of learned Trial Court are based on conjectures and surmises, hence has prayed for setting aside the impugned judgment and decree dated 30.06.2020.

05. Arguments advanced by the learned counsel for the appellant have been heard

and record has been perused with his able assistance.

06. Learned Trial Court initially framed the following issues:

> *"I. Whether the plaintiff is entitled for decree as prayed for? OPP*
> *II. Whether the accommodation was conditionally allotted to the plaintiff for a period of six months and defendant No. 3 is entitled for accommodation on merits? OPD*
> *III. Relief".*

07. Upon acceptance of an application for consolidation of suits, following additional issues were framed:

> *"I. Whether Mst. Aisha Bano is entitled for decree of declaration & mandatory injunction as prayed for? OPP*
> *II. Whether Mst. Aisha Bano, has concealed real facts, hence she is not entitled for decree as prayed for? OPD3*
> *III. Whether the suit of Mst. Aisha Bano is liable to be dismissed in view of preliminary objections raised by defendant No. 3 in her written statement? OPD3*
> *IV. Relief".*

08. After framing of issues, the parties

were directed to produce their evidence. The plaintiff got summoned Muhammad Shakeel Ahmed (care-taker, PESSI Hospital I-12, Islamabad) as PW-1, whereas the appellant / plaintiff herself appeared in the witness box as PW-2 and the following documents were submitted as documentary evidence:

> *"i. Authority letter in favour of M. Shakeel Ahmed as Ex.P-1.*
> *ii. Allotment policy as Ex.P-2. (3 pages)*
> *iii. Letter dated 25.08.2008 as Ex.P-3.*
> *iv. Complete record of allotment of plaintiff as Ex.P-4". (13 pages)*

09. According to the evidence, allotment was made in favour of the appellant in pursuance of decision of DPC meeting dated 10.10.2019, wherein it is mentioned that the Staff Residence Official Accommodation, Block B-2, Flat No. 2, Staff Colony PESSI Hospital, Islamabad, is hereby allotted to the following Nurses as per following detail:

> *1. Mst. Hameeda Parveen, Staff Nurse, SSH, Islamabad, w.e.f. 10.10.2019 to 09.03.2020.*
> *2. Mst. Aisha Bano, Staff Nurse, SSH, Islamabad, w.e.f. 10.03.2020 onward.*

10. That the appellant has also submitted affidavit dully signed by her and attested by oath commissioner of Islamabad, wherein, she has categorically stated that:

"من مظہر حمیداں پروین زوجہ نعمان طارق سٹاف نرس سوشل سیکیورٹی ہسپتال اسلام آباد بلاجبر اقرار کرتی ہوں۔ کہ کہ سائل مورخہ 24.09.2016 سے بطور سٹاف نرس پی جی ۱۱ بی پی ایس ۱۶ میں فرائض سر انجام دے رہی ہوں۔ کہ کہ میرے شوہر نعمان طارق پاکستان سے باہر سروس کر رہے ہیں۔ کہ کہ میں اپنے سسرال کے ساتھ 10-1 میں رہائش پزیر ہوں۔ جہاں گھر پر جھگڑوں کی وجہ سے پریشان ہوں۔

کہ کہ میرے والدین تحصیل جنڈ ضلع اٹک میں رہائش پزیر ہیں۔ اور میرا ڈومیسل اٹک کا ہے۔ کہ کہ میں اقرار اور تحریر کرتی ہوں کہ اگر مجھے کالونی سوشل سیکیورٹی ہسپتال اسلام آباد میں رہائش، کوارٹر دی جائے۔ میں ۰۶ ماہ مورخہ 10.10.2019 تا 09.03.2020 کے بعد سرکاری رہائش بخوشی چھوڑ دونگی۔ کہ کہ میں اقرار کرتی ہوں کہ اس سلسلے میں نہ کوئی درخواست بازی شکایت، تھانہ کچہری، عدالت میں کوئی درخواست نہیں دونگی اور نہ قانونی چارہ جوئی کروں گی۔ من مظہر نے تحریر پڑھ کر دستخط کئے"۔

11. The appellant was served with a notice dated 20.02.2020 to vacate the suit flat, in response whereof she submitted a reply by stating therein that she was under legitimate expectancy that suit flat was allotted to her on permanent basis and she

was expected to become mother, therefore, shown her inability to vacate the same.

12. It is admitted in all ends that allotment was made vide decision dated 10.10.2019, in favor of the appellant / plaintiff w.e.f. 10.10.2019 to 09.03.2020, the appellant accepted the decision and also sworn an affidavit, wherein she has categorically stated that she will vacate the flat after 09.03.2020. It is also mentioned in the said decision that the flat is allotted to respondent No. 3 / Mst. Ayesha Bano, Staff Nurse, SSH, Islamabad, w.e.f. 10.03.2020 onward.

13. Hence, it is clearly proved on the basis of above mentioned documents / evidence that the appellant / plaintiff was not liable to retain the accommodation after 09.03.2020.

14. It is trite that declaration is a discretionary and equitable relief, it is pre-condition that the parties should approach to the Courts with clean hands, in order to get the relief of declaration. Reference in this regard may be made to the following

case laws:-

(i) In a case titled as "***Shafqatullah and others Vs. District and Sessions Judge, Nowshera, N.W.F.P and 4 others" (2001 SCMR 274),*** it has been held as follows:-

> ***"It would also appear from the record that the petitioners did not approach the High Court with clean hands entitling them to the discretionary, equitable relief under the Constitutional jurisdiction".***

(ii) In a case titled as "***Manzoor Hussain and 3 others Vs. Muhammad Siddique (2000 CLC 623 [Lahore]),*** it has been held as follows:-

> ***"The grant or refusal of declaration is essentially discretionary and in this case, to my mind, the plaintiff had forfeited his right to an equitable relief by putting up a false case".***

(iii) In a case titled as

"***Shahnaz Parveen and another Vs. Javed Yaqoob and others" (2020 MLD 638 [Islamabad]),*** it has been held as follows:-

"It must be remembered that the declaration claimed under Section 42 of the Specific Relief Act, 1877 lies entirely within the judicial discretion of the Court and is to be exercised with caution according to the exigencies of a particular case. A party cannot, as of right, claim such a declaration, because such relief is more in the nature of an equitable relief than a legal remedy. Litigants with inequitable conduct ought not to be granted equitable reliefs such as declaration and injunctions. In the case of Muhammad Rafique v. Liaqat Ali (2006 YLR 2689), the Hon'ble Mr. Justice Sair Ali (as he then was) had the occasion to hold that plaintiffs who contradict their pleadings through their evidence deprive themselves of the equitable relief of declaration. Having adopted

contradictory positions, respondent No. 1 could not have approached the Court for seeking the discretionary and equitable relief of declaration".

(iv) In a case titled as "***University of the Punjab and another Vs. Malik Jehangir Khan" (1994 PLC(CS) 314 [Lahore High Court]),*** it has been held as follows:-

"Even otherwise it was a suit for declaration, the conduct of the plaintiff is very material. It is equitable relief and Court would be justified to refuse the relief if the plaintiff's hands were not clean".

(v) In a case titled as "***Muhammad Siddique Vs. Yahya Khan" (1994 CLC 1374 [Lahore]),*** it has been held as follows:-

"It was a suit for declaration, the conduct of the plaintiff is very material. It is equitable relief and Court

would be justified to refuse the relief if the plaintiff's hands were not clean".

15. For what has been stated above, suit filed by the appellant was rightly dismissed by the Court of learned Civil Judge 1st Class-West, Islamabad on 30.06.2021. Hence, the instant regular first appeal is without merit and is accordingly **dismissed in limine.**

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-