ORDER SHEET
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No. 1080 of 2025

Malik Basit
Vs.
Mst. Razia Sultana, etc

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24.03.2025	Mr. Ashfaq Ahmad Gujjar, Advocate for the petitioner.

Khadim Hussain Soomro, J: - Through this writ petition, the petitioner seeks the following relief:-

> " It is, therefore, most humbly prayed that the writ petition may kindly be accepted, the impugned judgment and decree dated 28.09.2022 alongwith interlocutory orders dated 02.03.2022, 22.09.2022 and 04.03.2025 may kindly be set aside, reserved, remanded back to the learned trial Court for a fresh decision on merits in the best interest of justice.
>
> Any other relief, which this Honourable Court may deem fit and proper , may also be awarded."

2. Brief facts of the instant writ petition are that the plaintiffs/respondents and late mother of defendant No.1/petitioner, namely Rukhsana Awan, are the legal heirs of late Hafiz Sher Muhammad, who are co-owners/sharers in House No. 2220-A, Street No. 72, Sector I-10/1-4 (CDA), Colony, Islamabad. One co-sharer/owner of suit house, i.e. mother of defendant No.1 died on 12.03.2019, leaving behind defendant No.1/petitioner as her sole legal heir as the late mother of defendant No.1/petitioner was divorced by her husband namely Shah Nawaz in 1992; therefore, defendant No.1/petitioner being the sole legal heir of the late mother of defendant No.1/petitioner became the co-sharer in the suit house with the plaintiffs/respondents. The suit house was in the occupancy of later Sher Muhammad and late Mst, Rukhsana Awan till the death of Hafiz Sher Muhammad, i.e. may 2009 and

after his death, defendant No.1/petitioner and his mother continued to be in possession of the suit house exclusively, and after the death of Hafiz Sher Muhammad, it was decided between the co-sharers that the monthly rent @ Rs. 10,000/- with the 10% annual increase will be distributed amongst all co-sharers by the occupant (Mst. Rukhsana Awan and defendant No.1/petitioner). The plaintiffs/respondents requested defendant No.1/petitioner to hand over their respective shares in the suit house, but defendant No.1/petitioner refused the plaintiffs to do so and instead extended threats to the plaintiffs/respondents personally and through social media. Defendant No.1/petitioner, being the shareholder in the suit house @1/5 shares, has no right to utilize the remaining 4/5 shares of the plaintiffs/respondents. Furthermore, defendant No.1/petitioner is also not authorized to make any structural change in the suit house. The plaintiffs, being the co-sharers of the suit house, are equally entitled to utilize the suit house.

3. The respondents/plaintiffs were summoned through notices. Defendant No.1/petitioner appeared and contested the instant suit through his written statement wherein he denied the claims of plaintiffs/respondents on factual and legal grounds, while defendant No.1/petitioner did not appear in the subsequent proceedings and proceeded against ex-parte vide order dated 28.09.2022. Defendant No.2/CDA contested the suit on factual and legal grounds by filing a written statement and prayed for its dismissal. Consequently, the suit was decreed vide judgment dated 28.09.2022.

4. I have heard the arguments of learned counsel for the petitioner and have reviewed the record with his able assistance.

5. The record reflects that the petitioner has impugned the judgment and decree dated 28.09.2022 passed in Suit No.235 of 2019, against which the first appeal lies under Section 96 of the Code of Civil Procedure Code, 1908. The petitioner instead of filing an appeal has filed the instant petition. The legal maxim 'Ubi jus ubi remedium' (wherever there is a right, there is a remedy). The maxim, as mentioned above, establishes a fundamental legal

principle, affirming that an individual has a lawful entitlement to a concomitant recourse to initiate legal proceedings in a court unless the court's jurisdiction is precluded. According to the rule of jurisdictive prudence, the courts usually show restraint with the directions to the parties first to take the recourse of an alternate and or equally effective mechanism and framework of remedy provided rather than to take departure to surpass or circumvent such remedy. Reliance can be placed in the case of the **Government of Punjab through the Secretary, Schools Education Department, Lahore and others v. Abdur Rehman and others (2022 SCMR 25).** The lawmakers' goal behind adopting these remedies is to constrain issues falling within the jurisdiction of an appellate court to be solely adjudicated before that forum. Any endeavour to bypass or evade these designated forums is deemed impermissible, as mandated by Article 199(1) of the Constitution. Where an adequate forum was available to the petitioner in the shape of an appeal that was not exhausted, the principle of exhaustion of remedies imposes a restriction on a litigant, prohibiting them from seeking a remedy in the constitutional jurisdiction.

6. The exceptional jurisdiction conferred by Article 199 of the Constitution is fundamentally designed to provide a specific remedy when the illegality and impropriety of an action by an executive or other governmental authority can be demonstrated without protracted inquiry. The term "adequate remedy" denotes a remedy that is effective, attainable, accessible, advantageous, and expeditious. The petitioner has an effective remedy for filing an appeal, but the petitioner missed the bus without any reasonable and lawful excuse. The doctrine of exhaustion of remedies dictates that a litigant must not pursue a remedy in a different court or jurisdiction until the remedy prescribed by law has been fully exhausted. The writ jurisdiction of the High Court should not serve as the exclusive recourse or remedy for rectifying the wrongs, distress, and sufferings endured by a party, especially when an equally efficacious, alternative, and adequate remedy is available under the law. This principle is grounded in the notion that the

litigant should not be inclined to bypass or disregard the provisions enshrined in the pertinent statute, which delineate specific procedures for challenging the impugned action. Proceedings under Article 199 of the Constitution are oriented towards enforcing a right rather than establishing a legal right. Therefore, the right asserted by the petitioner must not only be clear and complete but also straightforward, and there must be an actual infringement of that right.

7. With writ jurisdiction, the court cannot act as an appellate court, reviewing the decision for accuracy and deciding on the correct course of action or order to be made. Reliance can be made on **(AIR 1952 SC 192)** titled **"Veerappa Pillai vs Raman & Raman Ltd. And Others"** Writ petitions are distinct from appeals, which are considered as a continuation of a trial/suit. The High Court does not have the authority to perform the duties of a Civil Court since its writ jurisdiction is distinct from its regular civil court powers. The only purpose of the High Court's jurisdiction is to rectify any mistake made by the lower body when exercising its jurisdiction. It differs from an action applied under the Code of Civil Procedure. The High Court is not a Court of fact and will not question the decision of authority on merits and re-appreciate evidence by itself. It cannot sit as a Court of Appeal. The jurisdiction of the High Court is just remedial, not a cloak of appeal disguised to scrutinize every subject in depth. The High Court has no jurisdiction to consider the correctness of the decision of inferior authorities on merits except in writ of certiorari, especially when illegality and irregularity are apparent in the impugned judgment, but it cannot go into either review of evidence or appreciating the same as in the writ jurisdiction the court cannot sit as a court of appeal.

8. The constitutional and appellate jurisdictions are completely distinct and different in nature, scope and consequences. The constitutional jurisdiction can be invoked to question the legality of laws, regulations, or governmental acts and enforcement of

fundamental rights enshrined in the constitution, and it is to be filed when there is an infringement of constitutional rights, which is sometimes called a writ petition or a petition for a constitutional remedy under article 199 of the constitution Islamic Republic of Pakistan 1973, challenging the validity of a statute or executive or tribunal orders on the grounds that it infringes upon the petitioner's constitutional rights. Conversely, an appeal is a procedural as well as substantive right which allows one party to file an appeal before a higher court to reconsider a judgement made by a lower court. It is submitted by an aggrieved party who disagrees and is dissatisfied with the judgment or an order made by a lower court, claiming that there were mistakes in the interpretation of facts, the application of law, or procedural irregularities. The case record established in the lower court is the usual basis for appeals, which often centres on whether any legal mistakes impacted the case's conclusion. Following a review by the high court, the lower court's judgment may be upheld, overturned, or altered; alternatively, the matter may be remanded to the lower court for additional proceedings. Finally, although both appeals and constitutional petitions deal with questions of law, the former seeks to evaluate mistakes committed by the lower court's judgment, and the latter seeks to challenge the legality of laws or governmental acts. Furthermore, appeals are normally lodged in appellate courts, whilst constitutional petitions are normally submitted in high courts and the Supreme Court.

9. The petition is hopelessly barred by the doctrine of laches. There is no exception to the rule that the petition is to be entertained if there is a delay in seeking the remedy of appeal beyond the period of limitation provided by the statute. The petitioner delayed unreasonably in approaching this court in a writ petition; the principle of laches or staleness applies to the present case. In such cases, the Court may exercise its discretion to refuse relief based on the delayed filing of the constitutional petition. It is important to note that the application of laches depends on each case's specific circumstances and the court's discretion. The

discretionary powers are to be exercised on the sound principle of justice and equity, which is missing in the present case.

10. The legal principle conveys that a court operating in equity, concerned with fairness and justice, will decline to provide assistance or remedy to legal claims that have become stale or inactive over time. If a petitioner has not promptly asserted their legal rights and acquiesced or remained passive for a significant duration, the court may deem the claim "stale." In such cases, the court may refuse to intervene or grant relief due to the petitioner's prolonged procrastination and lack of timely asserting their rights. This principle highlights the importance of diligence and prompt legal action to seek equitable remedies. Reliance can be placed on Chapters 641–642, specifically Monographs 1181–82 of Halsbury's Laws of England, Third Edition, Volume 14, which deal with laches and read as under:-

> "A Court of Equity refuses its aid to stale demands, where the plaintiff has slept upon his right and acquiesced for a great length of time."

11. The aims and objectives of Article 199 of the Constitution are to promote justice, safeguard rights, rectify any injustices or excessive exercise of jurisdiction by lower courts, and correct procedural illegality or irregularity that might have adversely affected a case. The petitioner has failed to bring his case within the criteria mentioned above. Consequently, the instant petition being misconceived is ***dismissed in limine.***

(Khadim Hussain Soomro)
JUDGE

Approved for Reporting

S.Akhtar