JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 2427 OF 2025

JAVED IQBAL GONDAL

VS

CH. SHAUKAT ALI, ETC.

Petitioner by : Jan Muhammad Khan, Advocate.

Respondents by : Mr. Saleem Ullah, Advocate, for the Respondent No.1.

Date of hearing : 24.06.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the **"Constitution"**), Javed Iqbal Gondal (**"Petitioner"**) has challenged the Order dated 03.06.2025 (**"Impugned Order"**) passed by the learned Additional District Judge, West-Islamabad, whereby the appeal filed by him against the Order dated 16.04.2025 passed by the learned Rent Controller has been dismissed.

2. Notice was ordered to be issued to the Respondents. However, Mr. Saleem Ullah, Advocate waived notice on behalf of the Respondent No. 1.

3. The learned counsel for both parties expressed their readiness to advance arguments on the main petition. Accordingly, the case was heard on merits.

4. The brief facts of the case, as per the contents of the Petition, are that Ch. Shaukat Ali (**"Respondent No.1"**) filed an Eviction Petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 before the learned Rent Controller, West-Islamabad, contending therein that he is the landlord of a property titled "Makkah Centre" built on property bearing No. 25-A, situated at G-10 Markaz, Islamabad, measuring 75x50 feet and comprising of a basement, ground floor shop, first floor flats/offices, and second floor residential flats. He

entered into a Lease Agreement dated 14.07.2006 with Sikandar Ali Mirza (**"Respondent No.2"**) and the monthly rent of the premises was agreed at Rs. 105,000/-. It was further agreed that an amount of Rs. 2,500,000/- would be paid as security by Respondent No.2 to Respondent No.1**.** Respondent No.2 handed over a cheque bearing No. 5447950 drawn on UBL Pearl Continental Hotel Branch, Rawalpindi, amounting to Rs. 2,500,000/- as the security amount. It was also agreed, vide said agreement, that advance rent of six months amounting to Rs. 630,000/- would be paid by Respondent No.2 to Respondent No.1, and in this regard, Respondent No.2 handed over another cheque bearing No. 723905. When Respondent No.1 presented the cheque of Rs. 2,500,000/- before the concerned bank, the same was dishonoured; however, the other cheque of Rs. 630,000/- was encashed. It was agreed between Respondent No.2 and Respondent No.1 that Respondent No.2 shall vacate the suit premises immediately, and Respondent No.1 handed over a cheque of Rs. 630,000/- to Respondent No. 2. Later on, Respondent No.2 did not vacate the suit premises, which necessitated Respondent No.1 to file the Eviction Petition.

5. The Eviction Petition was contested by Respondent No.2 by filing a written reply. After framing of issues and recording evidence of the parties, the Eviction Petition was accepted vide Judgment dated 15.04.2014, and Respondent No.2 was directed to vacate the premises within thirty days. On 19.03.2025, Petitioner filed an application under Section 12(2) CPC, which was contested by Respondents No.1 & 2 through written replies. After hearing arguments of the parties, the learned Rent Controller, West-Islamabad, dismissed the said application vide Order dated 16.04.2025. Being aggrieved by the Order dated 16.04.2025, Petitioner filed an appeal before the learned Additional District Judge, West-Islamabad, which was also dismissed vide Impugned Order. Being aggrieved by the Impugned Order, the Petitioner has filed the instant Petition.

6. The learned counsel for the Petitioner submits that the Petitioner was a necessary and proper party to the eviction proceedings, being in undisputed possession of the demised premises since 2005 under documented agreements; that non-impleadment of Petitioner is a gross violation of the *audi alteram partem* rule; that any decree obtained behind the back of a person in possession and with vested rights is void *ab initio*; that Respondent No.1, fully aware of the Petitioner's possession and agreements, deliberately omitted him from the

proceedings, thereby committing a fraud upon the Court, vitiating the entire decree; that the learned Courts below misinterpreted the scope of Section 12(2) CPC, which clearly provides a remedy where a decree has been obtained by fraud or misrepresentation; that the courts below failed to consider relevant documentary evidence produced by the Petitioner**,** including agreements, utility bills, business documents, and FIR record; that the Impugned Order is passed in a mechanical, perfunctory, and arbitrary manner, without proper reasoning or application of judicial mind; that the learned Additional District Judge failed to exercise jurisdiction vested in him under the law, resulting in material illegality, miscarriage of justice, and subversion of fair trial rights guaranteed under Article 10-A of the Constitution; that it is a settled principle of law that a decree passed without impleading a necessary party is a nullity in the eyes of law and cannot be executed or enforced. Lastly, learned counsel prayed that the instant Petition may kindly be accepted, the Impugned Order may kindly be set aside, and the Petitioner's application under Section 12(2) CPC may kindly be restored.

7. The learned counsel for Respondent No.1 vehemently opposed the instant Petition and supported the Impugned Order**,** whereby the appeal filed by the Petitioner was dismissed. He submitted that the dismissal of the Petitioner's appeal was based on sound legal reasoning and in accordance with law. It was contended that the appellate Court had duly considered the Petitioner's submissions, evaluated the record, and found no merit in the appeal. The Impugned Order does not suffer from any jurisdictional error, illegality, or *mala fide* requiring exercise of Constitutional jurisdiction.

8. I have heard learned counsel for the parties and perused the record with their able assistance.

9. An Eviction Petition was decided on 15.04.2014 between Respondent No.1 and Respondent No.2, while the Petitioner was not a party to the said Ejectment Petition. The Petitioner claims ownership through agreements to sell dated 20.06.2005 and 16.03.2006 from Ch. Shaukat Ali (Respondent No.1) and Aman Ullah. When the Petitioner**,** on 02.12.2024, became aware of the ejectment order, he filed an application under Section 12(2) CPC on 20.03.2025. Notices were issued to the Respondents**,** and after hearing the parties, the learned Rent Controller dismissed the application. The Petitioner claims ownership through

agreements to sell, which is legally untenable on the ground that an agreement to sell does not itself create any proprietary rights, title, or interest in immovable property. Ownership can only be transferred through a registered sale deed, as mandated by the Transfer of Property Act, 1882. On the basis of those agreements to sell, he has filed a Suit for Specific Performance, which is pending before the learned Civil Court. The title of the Petitioner regarding the demised premises is yet to be decided by a Court of competent jurisdiction, and on the basis of such agreements, his application under Section 12(2) CPC, claiming himself to be the owner, is without any force. The learned Rent Controller rightly dismissed the application. Even the delay on the part of the Petitioner seems doubtful, and until and unless his Suit for Specific Performance is decided in his favour, he has no right of ownership in the demised premises which could entitle him to file an application under Section 12(2) CPC by asserting himself to be a necessary party in the ejectment proceedings. Similarly, the Appellate Court has rightly dismissed the appeal and upheld the order of the learned Rent Controller.

10. In light of the above discussion, the instant Writ Petition, being devoid of any merit, is **dismissed**. Resultantly, the Order of the learned Rent Controller dated 16.04.2025 and the Order dated 03.06.2025 passed by the learned Additional District Judge are **upheld**.

(MUHAMMAD AZAM KHAN)
JUDGE

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