# JUDGMENT SHEET
# IN THE ISLAMABAD HIGH COURT, ISLAMABAD
# JUDICIAL DEPARTMENT

C.R.No.360 of 2015
Muhammad Khursheed Khan
***Versus***
Asif Raza Mir

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| **Date of Hearing:** | 10.03.2016 |
| **Petitioner by:** | Syed Asghar Hussain Sabzwari and Sheikh M. Khizar-ur-Rashid, Advocates, |
| **Respondent by:** | Mr. Muhammad Sajjad Abbasi, Advocate |

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant Civil Revision Petition, the petitioner, Muhammad Khursheed Khan, impugns the judgment and decree dated 22.04.2015, passed by the Court of the learned Additional District Judge-VIII (West) Islamabad, whereby the petitioner's appeal against the Order dated 25.02.2013, passed by the learned Executing Court, was dismissed.

2. The record of this case reveals that on 30.10.2001, suit for declaration and specific performance of agreement of sell, titled "Muhammad Khursheed Khan Vs. Asif Raza Mir", was decreed. This decree was challenged by the respondent herein (Asif Raza Mir) before the learned appellate court. The appeal was partly allowed, vide judgment and decree dated 04.08.2008. The petitioner's prayer for declaration and specific performance was turned down by the learned appellate court. However, a money decree for an amount of Rs.18,50,000/- along with interest was passed in favour of the petitioner. Both the petitioner and the respondent were aggrieved of the said appellate order. The petitioner preferred a second appeal (R.S.A.No.12/2008) against the said decree, whereas the respondent filed a civil revision petition (C.R.No.416/2008) before the Hon'ble Lahore High Court, Rawalpindi Bench. The Hon'ble High Court, vide judgment dated 22.06.2010, accepted the petitioner’s second appeal, and dismissed the respondent's civil revision petition. Consequently, the appellate order was set

aside and the judgment and decree dated 30.10.2001 passed by the learned civil court in favour of the petitioner was restored. The judgment of the Hon'ble High Court was impugned by the respondent before the Hon'ble Supreme Court of Pakistan through Civil Petition No.1385/2010 and Civil Appeal No.557/2010. Vide judgment dated 27.07.2011, the Hon'ble Supreme Court set aside the judgment of the Hon'ble High Court, and the judgment and decree of the learned appellate court dated 04.08.2008 was modified. The short order dated 27.07.2011, passed by the Hon'ble Supreme Court in Civil Petition No.1385/2010 and Civil Appeal No.557/2010 is reproduced herein below:-

> *"For the reasons to be recorded later civil appeal No.557 of 2010 is allowed and Civil Petition No.2385 of 2010 is converted into appeal and partially allowed. consequently, the impugned judgment of the High Court is set aside, whereas then judgment and decree of the appellate court dated 04.08.2008 is restored, subject to the modification that the interest at the normal bank rate awarded by the appellate court to the respondent / decree holder on the decretal amount of Rs.1,85,000/- shall be adjusted against fair rent to be determined by the executing court for the period during which shop No.1, Sector G-6 Markaz, Islamabad remained in occupation of the respondent decree holder. We also direct that possession of the shop in dispute be delivered to the appellant -defendant as soon as he makes payment of the decretal amount of Rs.1850,000/- or deposits the said amount in the Executing Court. The shop in question shall, however, remain attached to secure payment of any amount which may be determined by the learned executing court after the adjustment of fair rent against the interest awarded to the respondent/plaintiff. "*

3. The respondent on 15.08.2011 filed an execution petition under Section 47 read with Order 21, Rule 11(2) C.P.C., against the petitioner before the learned Executing Court. The respondent had sought the execution of the Order dated 27.07.2011, passed by the Hon'ble Supreme Court. The petitioner filed his reply to the said execution petition on 27.09.2011. The learned Executing Court, on 18.04.2012, framed the following issues:-

> *"1. For how much time the shop in question remained in occupation by the judgment debtor and what is the fair rent of the said period ? OP Parties*
> *2. On the amount of Rs.18,15000/- what is the interest at plain bank rate ? OP Parties*

*3. Relief"*

4. In this execution petition, the respondent prayed for fair rent to be determined for the period from 11.01.1993 to 16.02.1999, and 25.09.2002 to 01.10.2011 (i.e. the date on which the suit shop was handed over to the respondent). The learned Executing Court was also required to determine and calculate interest on the amount of Rs.18,50,000/- from 16.6.1992 to 30.09.2011 (i.e. the date of the submission of CDR valuing Rs.18,50,000/-).

5. The learned Executing Court, vide order dated 25.02.2013, held that the respondent was liable to pay an amount of Rs.21,64,831/- to the petitioner as interest, whereas the petitioner was liable to pay fair rent in the sum of Rs.39,32,895/-. When the aforementioned amount of rent is adjusted against the interest, the petitioner was liable to pay Rs.17,68,064/- to the respondent.

6. Against the Order dated 25.02.2013, passed by the learned Executing Court, the petitioner as well as the respondent preferred appeals before the Court of learned Additional District Judge (West), Islamabad. These appeals were dismissed, vide consolidated judgment dated 22.04.2015. The respondent has not challenged the appellate judgment. The petitioner, however, has through this Civil Revision Petition, impugned the said judgment of the appellate Court.

7. Learned counsel for the petitioner assailed the appellate judgment dated 22.04.2015 by submitting that the same was not in accordance with Order 41, Rule 31 C.P.C.; that the learned appellate court should have given issue-wise findings; that the learned appellate court had only considered the evidence of A.W.5, Syed Mehboob Al-Mukaram Qadri, and had brushed aside the evidence adduced on behalf of the judgment debtor/petitioner; that the learned courts below had not given any reasons for not giving credence to the evidence adduced on behalf of the judgment debtor; that there was a difference between 'actual rent' and 'fair rent'; that the learned executing court should have determined fair rent as opposed to actual

rent; that A.W.6, Haji Gul (the bailiff) was in league with the respondent; and that the learned executing court should have determined compound interest, and not simple interest on the amount of Rs.18,50,000/-. In making his submissions, the learned counsel for the petitioner placed reliance on the cases of Province of Punjab Vs. Burewala Textile Mills Limited (2001 SCMR 396), M.Y. Malik & Co. Vs. Splendours International (1997 SCMR 309), and Najm Koreshi Vs. Chase Manhattan Bank, Now, Muslim Commercial Bank Limited, Lahore (2015 SCMR 1461).

8. On the other hand, learned counsel for the respondent submitted that the learned Courts below had not committed any error of jurisdiction; that the litigation between the contesting parties has been pending since a very long time, and the respondent had been denied the fruits of the decree; that the respondent did not challenge the decision of the appellate court even though the amount determined by the executing court was much less than the amount claimed by him as fair rent; that the learned trial court had applied the rent prevailing in 2004 (i.e. Rs.20,000/-), and not the increased rent of Rs.45,000/-, which should have been applied. The learned counsel for the respondent prayed for the revision petition to be dismissed.

9. I have heard the arguments of the learned counsel for the contesting parties and have perused the record with their assistance.

10. The Hon'ble Supreme Court, vide Order dated 27.07.2011, required the executing court to determine 'fair rent' for the period during which the suit shop remained in occupation of the petitioner. This amount was to be adjusted against the interest at the normal bank rate on the decretal amount of Rs.18,50,000/-, awarded to the respondent by the appellate court, vide judgment dated 04.08.2008. The Hon'ble Supreme Court also directed that the possession of the suit shop be delivered to the respondent as soon as he makes payment of the decretal amount of Rs.18,50,000/- or deposits the said amount in the executing court.

11. Now, it is not disputed that the suit shop remained in the possession of the petitioner from 11.01.1993 to 16.12.1999, and then again from 25.09.2002 to 01.10.2011. On 01.10.2011, the possession of the Suit Shop was recovered by the respondent from the petitioner through the bailiff, with the aid of the police. For the period between 16.12.1999 to 25.09.2002, the possession of the suit shop was with the respondent. The learned Executing Court was required to determine fair rent of the Suit Shop for the period during which it remained in the possession of the petitioner. Therefore, in determining the fair rent payable by the petitioner to the respondent, the said period between 16.12.1999 to 25.09.2002 was to be excluded.

12. The learned executing court in its Order dated 25.02.2013 has delved deeply in the evidence adduced by each of the witnesses produced by either side. In the proceedings before the learned Executing Court, respondent, examined himself as (AW-2), and produced Sajid Mehmood Butt (AW-1), Syed Abbas Ali Kazmi (AW-3), Tajibullah (AW-4), Syed Mehboob Al-Mukaram Qadri (AW-5), and Haji Gul, bailiff (AW-6). On the other hand, the petitioner examined himself as (RW-3), and produced Muhammad Mansoor (RW-1), and Riaz Khan (RW-2).

13. The contention of the respondent that in the year 1990, the respondent was receiving Rs.27,000/- as rent for the suit shop was repelled by the learned Executing Court. The learned Executing Court also spurned the respondent's assertion that the suit shop was divided into four portions because the persons to whom the respondent claimed the suit shop was allegedly rented to did not step in the witness box. The testimony of Sajid Mehmood Butt (AW-1) was not given credence because, other than discrepancies in his evidence, he did not produce any documentary evidence to show that he was paying rent at the rate of Rs.33,000/- per month. The respondent (AW-2) did not produce his tax returns to substantiate his claim regarding the rent he was receiving while the suit shop was in his possession. He also did not produce the rent agreements of the adjoining shops. The respondent's claim

that for some time during the period between 1990 and 1993, he was getting Rs.60,000/- to Rs.65,000/- per month as rental income from the suit shop was not proved through the production of documentary evidence. Other than the bailiff's report, there was no evidence that the Suit Shop was divided in four portions. The evidence of Syed Abbas Ali Kazmi (AW-3) was also not given credence because he did not produce any tenancy agreement showing that he was paying Rs.20,000/- to Rs.22,000/- per month as rent to the petitioner during 2009. He had produced an affidavit (Ex.A3), which could not be equated with a registered tenancy agreement. His testimony that his monthly income was Rs.4,000/- was not commensurate with his stance that he was paying Rs.20,000/- to Rs.22,000/- monthly rent. The testimony of Tajibullah (AW-4) was also not believed by the learned Executing Court because he did not produce any tenancy agreement signed by the landlord. The affidavit (Ex.A4) submitted by him was allegedly signed on 26.11.2009 and attested on 22.12.2009. He was not a tax payer and did not enter into any registered tenancy agreement.

14. The bailiff, Haji Gul (AW-6) had gone, in his official capacity, to the suit shop along with the police on 01.10.2011 and handed over the possession of the suit shop to the respondent/decree-holder. This was done in compliance with the order dated 30.09.2011, passed by the learned Executing Court. He testified that he had appeared as a witness in the Court on the instance of the respondent; that he had written his report at the instance of the respondent; that the report was signed by the respondent, but not by the petitioner; and that the names of the tenants of the suit shop were mentioned in the report at the instance of the respondent. The evidence adduced by AW-6 has also not been given any credence by the learned Executing Court.

15. The evidence adduced by A.W.5, Syed Mehboob Al-Mukarram Qadri, has been dealt with by the learned executing court in paragraph 23 of the Order dated 25.02.2013, as follows:-

*"23. Evidence of Syed Mehboob Al-Mukkaram, who stepped in witness box for evidence on behalf of petitioner as AW-5, is worth considering and his submission are very much appealing while keeping in view the fact that the plot where shop is situated is located in heart of city known as Maelody Market and mostly people dealing in auto parts, tyers and other related accessories and services are doing business in such area. As per the evidence of Syed Mehboob Al Mukkaram, he is tenant of petitioner Asif Raza Mir at Shop No.3 and when he acquired such shop on rent in year 2004, his monthly rent was Rs.20,000/- which increased from time to time and is now Rs.45,000/- per month. When specifically asked, such witness disclosed that the agreement (Exh-A5) was not renewed after two years and he cannot produce receipt as to present rent i.e. Rs.45,000/- before the court during his evidence. As such, the rent of his shop, which is same in size as compared to the shop in question, was rupees 20,000/- per month as per the contents of the agreement (Exh-A5) in year 2004 but present rent @ of Rs.45,000/- per month remained unverified. "*

**16. The evidence of Riaz Khan (RW-2) was not given credence because the tenancy agreement (Ex.R-2) was stated to be written and signed on 05.07.2010, but was attested on 10.07.2010. The stamp paper on which the said agreement was written was purchased on 01.06.2010. Petitioner (RW-3) deposed that initially the suit shop was in his possession, where he ran a business under the name of 'United Neo-Sign', and later he rented the suit shop to Muhammad Riaz. The rental income claimed to have been earned by the petitioner did not tally with the evidence of Muhammad Riaz. As per the testimony of the petitioner, only Muhammad Riaz and Sheikh Safdar had remained his tenants.**

**17. The learned Executing Court was of the view that the contesting parties did not bring convincing evidence for the determination of fair rent. The respondent was not able to prove that during 1990, he was earning a rental income of Rs.27,000/- from the suit shop. None of the persons who the petitioner claimed were his tenants were brought into the witness box. The attesting witnesses of the alleged tenancy agreement (Ex.A2) were also not produced.**

**18. The petitioner's assertion that the rent for the suit shop was Rs.10,052/- could also not be proved. The evidence adduced on the petitioner's side showed that the rent for the front portion of the suit shop was less than the rear portion. The**

learned Executing Court disbelieved the petitioner's evidence because the suit shop was situated in the heart of the city (Civic Centre, Markaz G-6, Islamabad) and is a hub of automobile related business.

19. The learned Executing Court gave credence to the testimony of Syed Mehboob Al-Mukaram Qadri (AW-5), who produced a lease agreement (Ex.A5) which was executed with the respondent in 2004 for a shop, which is of the same size as the suit shop. As per this agreement the monthly rent was Rs.20,000/- with an annual increment of 10%. The learned Executing Court in determining the fair rent for the suit shop, reduced by the rent by 10% on an annual basis for the period between 15.12.1999 going backwards to 11.01.1993. The period between 16.12.1999 to 25.09.2002 was excluded. And for the period from 26.09.2002 to 01.10.2011, the rent was increased by 25% every three years. The basis for this calculation was the rent for the suit shop in the year 2004 to be Rs.20,000/-. Under this formula, the learned Executing Court determined the fair rent for the aforementioned period to be Rs.41,10,227/-.

20. The learned Executing Court was also required to determine interest payable by the respondent to the petitioner on Rs.18,50,000/- from 16.06.1992 to 30.09.2011. Not satisfied with the assistance from the witnesses produced by either side, regarding the interest rate to be applied, the learned Executing Court sought the assistance of the State Bank of Pakistan. Consequently, two officials, namely, Mr. Ahmad Siddiqui, Administrative Officer, State Bank of Pakistan, (CW-1), and Mr. Ahmed Nadeem, Assistant Director (Statistics and Data), Warehouse Department, State Bank of Pakistan (CW-2) appeared before the learned Executing Court and had their evidence recorded.

21. As regards the interest payable by the respondent to the petitioner on Rs.18,50,000/- from 16.06.1992 to 30.09.2011, the learned Executing Court essentially relied on the testimony of the Court witnesses/ officials from the State Bank of Pakistan.

**Placing reliance on the documentary evidence produced by the said witnesses, the learned Executing Court determined interest payable by the respondent to the petitioner for the said period to be Rs.21,64,831/-.**

**22. As regards the case law referred to by the learned counsel for the petitioner, in the case of Province of Punjab Vs. Burewala Textile Mills Limited (2001 SCMR 396), it has been held that where a decree is silent with respect to the payment of interest under Section 34 (2) C.P.C., the same is deemed to have been refused.**

**23. In the case of M.Y. Malik & Co. Vs. Splendours International (1997 SCMR 309), it was held as follows:**

> ***"10. It cannot be disputed that grant of interest pendente lite and after passing of the decree in a money suit, is discretionary with the Court. It is true that under section 34, C.P.C. it is laid down that the interest after the date of the decree may be allowed by the Court at such rates as the Court may deem reasonable on the aggregate sum so adjudged but this does not mean that the Court is bound to grant interest on the aggregate sum so adjudged in the suit. Subsection (2) of section 34, C.P.C. clearly provides that where the decree is silent with regard to the payment of further interest on such aggregate sum, it shall be deemed to have been refused by the Court and for that a separate suit is also barred."***

**24. In the case of Najm Koreshi Vs. Chase Manhattan Bank, Now, Muslim Commercial Bank Limited, Lahore (2015 SCMR 1461), the decree under execution neither granted interest for the period prior to the filing of the suit nor awarded interest on the aggregate of the principal amount of the decree and interest pendent lite. After making reference to Section 34 C.P.C. it was held as follows:**

> ***"11. ... The Court passing a decree has discretion to order interest at such rates as it deems reasonable, accruing for different periods either on principal or aggregate amounts. The said legal provision expressly contemplates the award of interest pendente lite on the principal sum adjudged and also post decretal further interest on the aggregate of the said principal sum together with interest accrued thereon till the date of payment of the aggregate amount. As the award of interest on a decree is discretionary therefore, the terms on which it is ordered must be spelled out clearly in the contents of the decree. Otherwise, silence of the decree in the matter of further interest is to be deemed as refusal under section 34(2), C.P.C. The rate at which interest is ordered to accrue and whether such interest is to be calculated at a simple rate or a***

*compound rate are also discretionary elements that ought to be specified in a decree."*

**25. In the case at hand, even though the judgment dated 22.04.2015, passed by the appellate court is not on the record, the Hon'ble Supreme Court has vide order dated 27.07.2011 referred to the interest awarded by the appellate court at the normal bank rate. The decree did not require compound interest to be paid. In the absence of such a requirement, simple interest was required to be determined by the learned executing court. Therefore, the learned executing court did not commit any illegality by determining interest on Rs.18,50,000/- payable by the respondent to the petitioner. Hence, the case law relied upon by the petitioner does not come to his aid.**

**26. I cannot bring myself to agree with the contention of the learned counsel for the petitioner that the appellate Court was supposed to give issue-wise findings. It is settled law that when the appellate Court confirms the judgment of the trial Court, it is not bound to give findings on each and every issue. Failure of the appellate Court to discuss the case issue-wise is not an illegality. An appellate Court was not concerned with giving issue-wise findings under Order 41 Rule 31 C.P.C, but has to state points for determination, give its decision thereon and the reasons for the decisions. Reference in this regard may be made to the law laid down in the cases of Mst. Zaitoon Bibi Vs. Dilawar Muhammad (2004 SCMR 877), Mst. Hayatan Mai Vs. Aziz Mai alias Azizi (2016 YLR 539), Hidayatullah Khan Vs. Ajmal Khan (2006 CLC 35), Muhammad Bakhsh Vs. Jamal (2004 CLC 643), Darya Khan Vs. Saleh Khan (2004 CLC 1843), Musa Vs. Mst. Maryam (2003 CLC 1593), and Faridoon Vs. Shafiullah Khan (2002 CLC 1262).**

**27. The memo of petition is silent about the evidence that the learned Courts ought to have taken into consideration, or the evidence that should not have been taken into account. A revision petitioner must plead with specificity the illegality material irregularity in the proceedings before the lower Courts. Even during the arguments, the learned counsel for the**

petitioner did not draw the attention of the Court to any piece of evidence which the learned Courts below had ignored. In the case of Khanzada Vs. Bahadur (2003 YLR 312), it has been held that a mere assertion that the order impugned was the outcome of misreading or non-reading of evidence without a positive attempt to substantiate the same was of no consequence.

28. Another crucial aspect of the matter is that the orders of the learned lower Courts are concurrent. The High Court had very limited jurisdiction to interfere in concurrent findings of the Courts below while exercising revisional jurisdiction under Section 115 C.P.C. Revisional jurisdiction of the High Court being corrective and curative in nature would come into play to undo manifest injustice having been caused or done to a petitioner. In the case of Malik Muhammad Khaqan Vs. Trustees of the Port of Karachi (KPT) and another (2008 SCMR 428), it has been held that when concurrent findings are contrary to evidence, material on record and against the law, then the revisional Court has the jurisdiction to rectify the same so as to bring the findings in consonance with the evidence on record or to remove the illegality in the judgment. If the revisional Court finds any violation of a provision of law or ignorance of law by the Court then it is vested with the authority to set aside concurrent findings. Furthermore, in the case of Nazir Ahmad Vs. M. Muzaffar Hussain (2008 SCMR 1639), it has been held that the High Court, in exercise of revisional jurisdiction, would be justified in interfering with and set at naught concurrent findings of fact by the Courts below where, on examination of the record, it is found that the Courts below had arrived at an erroneous conclusions based on error in jurisdiction, misreading or non-reading of documentary or oral evidence and misconstruction of law.

29. An authority of recent vintage is the case of Nizamuddin Vs. Sheikh Zia-ul-Qamar (2016 SCMR 24), wherein it has been held as follows:-

> *"It is settled law that ordinarily the revisional court would not interfere in the concurrent findings of fact recorded by the first two courts of fact but where there is misreading and non-*

*reading of evidence on the record which is conspicuous, the revisional court shall interfere and can upset the concurrent findings, as well as where there is an error in the exercise of jurisdiction by the courts below and/or where the courts have acted in the exercise of its jurisdiction illegally or with material irregularity."*

**30. A study of the concurrent orders passed by the learned lowers courts show that they do not suffer from erroneous conclusions based on error in jurisdiction, misreading or non-reading of documentary or oral evidence and misconstruction of law. They are neither contrary to the evidence, material on record nor have they been passed in violation of a provision of law or ignorance of law. I also do not find any injustice caused to the petitioner by the learned lower Courts in the instant case.**

**31. Now, after adjusting the fair rent (Rs.41,10,227/-), payable by the petitioner to the respondent against the interest (Rs.21,64,831/-), payable by the respondent to the petitioner, the net result was that an amount of Rs.17,68,064/- was payable by the petitioner to the respondent. The learned Executing Court directed the petitioner to pay the said amount to the respondent within a period of one month from the date of the order (i.e. 25.02.2013). It has now been more than three years and this amount has not been paid.**

**32. In view of the above, I find that the Impugned Orders do not suffer from any jurisdictional error, material irregularity or illegality within the meaning of Section 115 C.P.C. The learned Executing Court had elaborately scrutinized and assessed the entire evidence on all the issues. Each and every aspect of the case had been attended to and the credibility of the witnesses had been assessed on the basis of what was said in the examination-in-chief and what was elucidated in the cross-examination. The learned Appellate Court had also grappled with the controversial points and discussed the same.**

**33. Before parting with this judgment, it must be observed that the Privy Council, 144 years ago in 1872, in the case of Wards v. Maharajah Kumar Ramaput, (14 Moo Ind. App. 605) remonstrated that *"the difficulties of a litigant in India begin when he has obtained a decree".* The state of affairs are true**

even as of today as the facts of the present case amply demonstrate. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. There should not be any delay in execution of a decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain. Applying and sharing the view and anxiety of the Privy Council, this court is of the considered view that the protracted litigation which was decided in favour of the respondent herein, has to be finally concluded in favour of the respondent so as to enable him to get effective justice.

34. Resultantly, this civil revision petition is dismissed, but in the circumstances of the case, there shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)**
**JUDGE**

**ANNOUNCED IN AN OPEN COURT ON _____/2016**

**(JUDGE)**

Qamar Khan*

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