

## HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ petition No.2152/2021.

Date of inst.11.06.2021.

Date of decision 10.05.2022.

Fayyaz Ahmed Abbasi S/o Muhammad Niaz Khan R/o Phota Aliot,  
owner of Abbaseen Guest House, Gojra Bypass Road  
Muzaffarabad.

Petitioner

VERSUS

1. District Judge Muzaffarabad having office at Block No.A, District Complex, Muzaffarabad.
2. Senior Civil Judge/Rent Controller Muzaffarabad having office at Block No.A, District Complex Muzaffarabad.
3. Collector/District Deputy Commissioner, Muzaffarabad having office at District Complex, Muzaffarabad.
4. Assistant Commissioner Muzaffarabad having office at District Complex, Muzaffarabad.
5. Naib Tehsildar Muzaffarabad having office at District Complex, Muzaffarabad.
6. Aftab Ahmed Cheema S/o Ch. Bashir Ahmed Cheema R/o Gojra Near Jamia Masjid Ward No.24, Tehsil & District Muzaffarabad.

Respondents

### WRIT PETITION

Before:- **Justice Syed Shahid Bahar, J.**

#### PRESENT:

Sardar Pervaiz Mughal, Advocate for petitioner.

Nemo for respondents No.1 to 5.

Sh. Muhammad Saleem, Advocate for respondent No.6.

#### ORDER:-

The titled writ petition has been addressed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, seeking aid of this Court by urging a specific relief in the following manner:-

*"It is, therefore, most humbly prayed on behalf of the petitioner that by accepting the instant writ petition an appropriate*

writ may kindly be issued in favour of the petitioner against the official respondents by:-

- (i). *Declaring order dated 25.03.2021, of learned Rent Controller Muzaffarabad and judgment of learned District Judge Muzaffarabad dated 08.06.2021, void ab-initio consequently all the proceedings done by District Administration may kindly be declared illegal without having any legal effect.*
- (ii). *Directing respondents to restore possession of Guest House along-with all the items install by petitioner in Guest House to petitioner and petitioner may kindly be granted reasonable opportunity/time to pay Rs.220,000/- to private respondent and reasonable time may kindly be awarded to petitioner to vacate building."*

Precise facts culminating into filing of the instant writ petition are that petitioner is 1<sup>st</sup> class State Subject of AJ&K. It is stated that petitioner is running a business of hotel and guest house with the name of Abbaseen Guest House at Gorja Bypass Road Muzaffarabad from the last 06 years. It is stated that after getting possession of the building, the petitioner has invested huge amount for decoration of the same. It is claimed that due to COVID-19 in the year 2020, business of petitioner was disturbed and hotel and guest house remained closed for more than one year and petitioner could not pay rent to the land-lord for four months upon which private respondent moved an application for ejectment of petitioner before the learned Rent Controller Muzaffarabad, who passed a favorable order dated 30.09.2020, which was assailed by the petitioner before the learned District Judge Muzaffarabad and the same after hearing the parties, was partly accepted through order dated 09.03.2021. It is stated that the private respondent by twisting facts filed an application before the learned Rent Controller on 23.01.2021, for execution of degree earlier passed by him. However, on 30.01.2021, private

respondent filed another application for confiscation of articles installed by the petitioner in the said guest house, which was accepted. It is mentioned that the learned Rent Controller through order dated 25.03.2021, passed an order for auction of confiscated items, which was assailed before the learned District Judge Muzaffarabad and the same after hearing was rejected through order dated 08.06.2021, hence, the captioned writ petition.

Learned counsel for contesting parties were directed to file written statement through order dated 05.04.2022 and needful has accordingly been done.

Arguments heard. Record perused.

Sardar Pervaiz Mughal, learned counsel appearing on behalf of the petitioner vehemently argued/pressed the ground raised in the memo of writ petition and contended that order dated 25.03.2021, passed by the Rent Controller Muzaffarabad is against law and unjust, that too the judgment passed by the District Judge Muzaffarabad dated 08.06.2021, is void ab-initio and illegal. Learned counsel staunchly contended that proceedings of auction are being carried out without affording an opportunity of hearing to the petitioner. He further added that the petitioner has already deposited Rs.200,000/- before the Court of District Judge Muzaffarabad in the head of decretal amount, hence, decree was partly satisfied thus order quo auction was harsh and unjust in the circumstances.

While in juxtaposition the learned counsel representing the answering respondent No.6, strongly opposed the stance of the petitioner and prayed for dismissal of the same. While controverting the pleaded stance of the petitioner the learned counsel for respondent No.6, Sh. Muhammad Saleem, vehemently put forth his version by alleging that the petitioner has approached the Court with unclean hands, hence, he is not entitled to ask for aid of this Court in equitable jurisdiction. He further contended that both the decisions passed by the Courts below are liable to be upheld as the impugned decisions are well reasoned and wisdom oriented, thus merits no interference at all.

Be that as it may matter in hand pertains to the rent dispute coming within the jurisdiction of Rent Controller (having exclusive jurisdiction over the matter), who rightly dealt with the matter in hand and decided the application of respondent No.6, with the infra direction:-

”لہذا بحالات بالا فیصلہ بحق سائل بخلاف مسئول میں صراحت صادر کیا جاتا ہے کہ  
مسئول -/420,000 سائل کو ادا کرنے اور تاخیر میں غلطی مسئول ماہانہ کرایہ مسئول واجب الادا ہے گا اور  
مسئول نمبر 02 منازل گیسٹ ہاؤس (نزد گورہ جامع مسجد وارڈ نمبر 24) کا قبضہ حوالہ سائل کرے۔“

The petitioner neither paid monthly rent nor vacated and handed over the premises to respondent No.6. Furthermore, time barred appeal against the decision of Rent Controller met the same fate and ultimately execution proceedings were initiated but the petitioner despite service did not bother to appear before the executing Court. Consequent of which the house holds/articles lying in the premises were confiscated.

For the safe administration of justice, we constituted a commission comprising upon Mr. Serosh Gillani, Advocate, who submitted a report on 26.02.2022, which verified that building is in possession of land lord. He further reported that all the articles owned by the petitioner are in good condition.

We have passed the order quo appointment of commission on complaint of the petitioner that despite fact he has partially deposited the decretal amount in the tone of Rs.200,000/- (two lac) the respondent No.6, has destroyed the house hold articles of the petitioner.

As adumbrated above the decree against the petitioner is yet to be satisfied in its pros and cons, petitioner in view of the decision of the Rent Controller is defaulter as the decision has attained finality and appeal against the same was time barred.

The Azad Jammu & Kashmir Rent Restriction Act, 1986, is a special law meant for summary disposal of the dispute that is why only one right of appeal is provided in the law against the order/decision passed by the Rent Controller.

It has been laid down by the Apex Court of in the case reported as [1994 SCR 235] that if the order of Rent Controller is not complied with the punitive action can be pressed into service.

Remedy by way of writ is an extra ordinary remedy, which can only be exercised in extra ordinary circumstances which is always subject to conduct of the petitioner.

It is celebrated principle of law that High Court while exercising writ jurisdiction does not sit as Court of appeal upon

the order passed by the subordinate Court or Tribunal. Ready reference in this regard is [2001 SCR 210].

It has been held by the Hon'ble Apex Court of AJ&K in [2011 SCR 279] that the writ jurisdiction is limited and is exercised according to the parameters laid down by the AJ&K Constitution, 1974.

In vista of the above factual matrix, I am not inclined to sit over the decision of Rent Controller in order to substitute his wisdom which is clothed with evidence, execution is fruit of the decree and decree holder is entitled to get maximum advantage of the same in accordance with law. No violation of law has been pointed out in the impugned orders, hence, interference is not warranted.

Nub of above narrated factual matrix is that the titled writ petition is meritless, hence, dismissed and consigned to record. Miscellaneous application in the instant case be deemed to be dealt with in the same manner.

-Sd-

Muzaffarabad,  
10.05.2022 (MM)

**JUDGE**

***APPROVED FOR REPORTING***

-Sd-

**JUDGE**