

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT

Before:- Mr. Justice Dr. Rana Muhammad Shameem, Chief Judge.
Mr. Justice Javed Iqbal, Judge.
Mr. Justice Shabaz Khan, Judge.

Civil Appeal No. 38/2015

in

CIVIL PETITION FOR LEAVE TO APPEAL NO. 02/2015.

Mst. Hoor Naz Matron (BS-17) District Headquarter Hospital Gilgit.

Petitioner.

VERSUS

1. Medical Superintendent District Headquarter Hospital Gilgit.
2. Deputy Commissioner/Collector Gilgit.
3. Home Secretary Gilgit-Baltistan.
4. Secretary Service & GAD Gilgit-Baltistan.

Respondents/Defendants.

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF GILGIT-BALTISTAN (EMPOWERMENT 7 SELF GOVERNANCE) ORDER 2009, READ WITH ENABLING ARTICLES OF GILGIT-BALTISTAN SUPREME APPELLATE COURT RULES 2008 AGAINST THE IMPUGNED JUDGMENT/ORDER DATED 16-02-2015 PASSED BY LEARNED CHIEF COURT GILGIT-BALTISTAN IN WRIT PETITION NO.145/2014 WHEREBY THE CHIEF COURT GILGIT-BALTISTAN DISMISSED THE WRIT PETITION HOLDING THE SAME MERITLESS MAINTAINING IMPUGNED JUDGMENT DATED 22-12-2014 PASSED BY COURT OF DISTRICT JUDGE GILGIT AND JUDGMENT DATED 08-09-2014 PASSED BY CIVIL JUDGE 1ST CLASS GILGIT.

Present:-

1. Mir Ikhlaq Hussain, Advocate on behalf of the petitioner.
2. Advocate General, Gilgit-Baltistan, for the respondents.
3. Mr. Ali Nazar, Advocate on record.

Date of Hearing:- 02-05-2016.

JUDGEMENT

JAVED IQBAL, J..... This petition for leave to appeal has been preferred by the petitioner namely Mst. Hoor Naz against the judgment/order passed by the Division Bench of Chief Court Gilgit-Baltistan, vide order dated 16-02-2015. Feeling aggrieved by the order of Chief Court Gilgit-Baltistan, knock the door of this Apex Court through C.P.L.A. NO. 02/2015, for justice, law and equity.

2. Resume of the case in hand is that the petitioner/appellant had joined regular government service in the post of head nurse in the year 1997.

In the year May 2003 the petitioner was promoted to the post of Matron BS-17. Having no personal residence at Gilgit and being female employee having a post of emergency attendance applied for allotment of a government quarter under the poll of Health Department. The then medical superintendent Gilgit allotted quarter vide No. MG-5 on 28-10-200, but did not deliver possession to the petitioner and let the quarter remained in the possession of someone else and the petitioner waited for delivery of possession but the quarter was not delivered therefore the petitioner again approached medical Superintendent Gilgit (respondent No.1) for allotment of a vacant quarter. Respondent No.1 was pleased to allot quarter No. MD-5 vide No. 111/DGH/2006/2291 dated 15-1-2006. After the said allotment petitioner invested on maintenance of the of the quarter in question out of her personal resources as it was not worth human use due to deteriorated condition and soon after the renovation and maintenance respondent No.1

cancelled/withdraw the allotment order vide his impugned cancellation order No.111/DHQ/2006/2477 dated 11-12-2006 against which the petitioner filed the suit in the Court of Civil Judge 1st class Gilgit. The learned trial Court dismissed the suit vide impugned judgment dated 08-09-2014 which was impugned before the Court of learned District Judge Gilgit through revision petition, which was also dismissed. That petitioner filed writ petition before Hon'ble Chief Court against the impugned judgment of District Judge Gilgit dated 22-12-2014. The learned Chief Court without inviting/calling for comments of respondents dismissed the writ petition vide its impugned order dated 16-02-2015 holding the writ petition meritless. The impugned order of Chief Court is based on misconception, misunderstanding, extra hurry and hasty, non-considerate, hence this petition for leave to appeal on the following inter alia other grounds.

3. We have heard the arguments of both sides counsel pro and contra. The learned Advocate Mir Ikhtlaq Hussain on behalf of the petitioner/plaintiff submits that the petitioner filed a Civil Suit against the defendants before Civil Court Gilgit, the defendants/respondents, filed an application under Order 7 Rule 11 Civil Procedure Code, and in application under Order 7 Rule 11 Civil Procedure Code the defendants/respondents, urge that the plaintiff/petitioner has no cause of action against the defendants/respondents, the petitioner/plaintiff replied this application and negate the arguments of the defendants/respondents, the petitioner/plaintiff's counsel urge that, if the plaintiff/petitioner, has no cause

of action against the defendants/respondents, the matter will be decided on merits and disclosed in her plaint cause of action in para No.8 of the plaint.

For convenient we reproduce the Order 7 Rule 11 C.P.C:-

Rejection of plaint, -- the plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;**
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;**
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed a time by the Court, fails to do so;**
- (d) where the suit appears from the statement in the plaint to be barred by any law.**

From perusal of above order of CPC it transpires that, plaintiff/petitioner, has clearly disclosed a cause of action, in her plaint.

Where the plaint does not disclose cause of action, it has to be rejected and for this purpose only the plaint is to be looked and nothing else. The written statement cannot be looked and nothing else.

From the perusal of plaint of plaintiff, it transpires that the plaintiff has disclosed cause of action, the respondent filed application under Order 7 Rule 11 C.P.C, urge that the plaintiff has no locus standi to file this suit in other words, plaintiff have no availability of cause of action, which is to be decided on merits.

4. For what has been discussed above this petition is converted into appeal and same is allowed, the impugned orders/judgments of the learned lower Courts are set a-side, and remitted back the case to the trial Court, to decide the matter on merits.

Parties bear their own cost. The petition is converted into appeal and allowed.

Case remanded.

Announced:
02-05-2016.

JUDGE

CHIEF JUDGE

JUDGE