

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT, PESHAWAR,**  
**[[JUDICIAL DEPARTMENT]]**

**Review Petition No.151-P/2020 in WP No. 7435-P/2019.**

*Mst. Maria Aziz versus Muhammad Nawaz*

Petitioner(s) by: *M/s Nasir Khan Khalil & Qazi Jawad Ehsanullah,  
Advocates.*

Respondent(s) by: *Mr. Muhammad Ihsanullah Khan, Advocate.*

Date of hearing: **12.07.2021**

**J U D G M E N T**

**MUHAMMAD NAEEM ANWAR, J.-** This single judgment in the instant review petition shall also decide Review Petitions No.152-P/2020 in WP No.7436-P/2019, No.153-P/2020 in WP No.7437-P/2019, No.154-P/2020 in WP No.7438-P/2019, No.155-P/2020 in WP No.7439-P/2019, No.156-P/2020 in WP No.7440-P/2019 & No.157-P/2020 in WP No.7441-P/2019, not because that common question of law and fact is involved in all these petitions but also that the judgments under review were decided through consolidated judgment in WP No.7435-P/2019.

**02.** Mr. Qazi Jawad Ehsanullah, Advocate learned counsel for the petitioner contended that in accordance with section 13(2)(vi) of the West Pakistan Urban Rent Restriction Ordinance, 1959, the landlord is only required to have obtained sanction for the purpose of reconstruction or erection from the quarter concerned of the area where such building or rented land is situated whereas, it is not the requirement that the sanction so obtained must be annexed with the application for ejection of the tenant and in the instant matter, such approval was granted by defunct Municipal Corporation, Peshawar on 19.03.2015, regarding which, Town Municipal Administration, Town-I, Peshawar has issued a certificate on

18.09.2020 and the petitioner of all the petitions has deposited the requisite fee, thus, there is an apparent error/mistake in the judgment under review when the petitioner's plea was turned down on the ground that she has not placed on record the sanction granted to her. He added that the error in the impugned judgment is floating on the surface of record resulted into dismissal of petitioner's petitions and now the petitioner through her attorney, has obtained the certificate pertaining to the approval of site plan clearly reflects that the permission was granted to the petitioner by the concerned authority on 19.03.2015 and the said fact has further been authenticated by the receipt through which the petitioner has deposited the requisite fee for approval of site plan. He maintained that the reason for non-production of attested copy of approved plan for reconstruction from the concerned office was the written reply of respondents wherein the factum of approval of site plan was not denied by the respondents, therefore, under Article 113 of Qanun-e-Shahadat Order, 1984, the petitioner was not required to prove the fact which was not disputed by the tenants. Learned counsel for the petitioner in respect of civil miscellaneous No.81-P/2020 in the instant review petition has contended that petitioner was under misconception that review application can be filed within a period of 30-days as such, he applied for attested copy on 28.09.2020 and after delivery of attested copy, he has rightly filed the application/review petition on 17.10.2020, as such, the bar of limitation if any, may be condoned for proper administration of justice which requires that the lis between the parties should be decided on merits rather than on technicalities. Lastly, he contended that though the petitioner could file fresh application for

ejectment as held by the learned appellate Court, however, the filing of fresh application for ejectment would take considerable time for decision thereon as six (06) good years of the petitioner has already been lapsed and the present review applications falls within the ambit and scope of section 114 read with Order XLVII Rule 1 CPC thus, the petitioner is entitled to be treated in accordance with law.

**03.** Conversely, Mr. Ihsanullah Khan, Advocate learned counsel for respondents contended that review is permissible only in respect of a clerical or arithmetical error but when someone aggrieved from the findings he could approach to the appropriate forum for redressal of his grievance. He pointed out that the factum of obtaining necessary sanction from the authority concerned was required to be proved but the petitioner has completely failed because neither any such approval was placed on record nor any witness in that respect was produced before the learned Rent Controller and the certificate issued by the Tehsil Municipal Administration, as annexed with the application for review, can only be given any weight if the same was subjected to cross examination, as such, the alleged certificate cannot be relied upon. He also argued that all these review petitions are barred by time and in the applications filed for condonation of delay, no good ground much less the convincing one was pleaded, as the law require that each and every day must be specifically explained through plausible reasons. He requested for dismissal of review petitions.

**04.** Arguments heard and record perused.

**05.** Admittedly, certificate of approval, issued on 18.09.2020 was not available on record at the time of hearing of writ petitions on 07.09.2020.

It is also undisputed that neither the petitioner has placed on record the approval so granted by the authority concerned nor has produced any witness to authenticate the same. This Court has never held that the applications for ejectment were dismissed on the ground that the petitioner/landlord had not annexed the approved site plan with her applications. The operative part of the judgment under review, to this effect, is reproduced as under: -

**“There are two ingredients of this section, one the rented premises are reasonably and in good faith required by the landlord for reconstruction and second that the authority concerned had granted sanction for reconstruction. There is no cavil with the proposition that non-availability of sanction of building plan at the time of filing of ejectment petition is no ground to non-suit the landlord as the approved site plan can be produced even during the proceedings or at the time of evidence as held by the Hon’ble Karachi High Court in M/S Pak Army furnishing stores’ case (PLD 1985 Karachi 20). The operative part of the judgment is reproduced as under: -**

**“Ejectment application cannot be rejected on the ground that sanctioned was not produced at the time of filing of such application or its validity expired or suspended before or after filing ejectment application or during its pendency”**

**Even a step ahead could be pondered permissible by producing the sanction at the time of arguments before learned Rent Controller but, as held in earlier part of this paragraph, even today but the petitioner has failed to produce the sanction which was precondition for vacating the rented premises on the ground of reconstruction. Had the petitioner produced the sanction even today, by relying on the judgment and by extending the bonafide intention, it would have been considered while placing reliance on the principle as set down by this court in Haji Muhammad Ayub vs. Syed Buzaraf Shah and three others (PLD 1983 Peshawar 67)”**

**06.** The scope and object of review has come under discussion before this Court in the case titled **“Haji Bahadar Khan vs. Habib Ahmad and others” (2021 CLC 114)** wherein, this Court has held: -

**“6. No doubt, the Courts are vested the powers to review the Orders, Judgements, and decrees with certain restrictions, limitations conditions, being provided in Section 114, and Order XLVII, Rule 1, of the Code of Civil**

Procedure. The Court while reviewing judgement, Order cannot sit as a Court of appeal as the grounds for appeal and review are totally different from each other. Whenever there is a clerical, arithmetical, accidental, typographical and pencil slip mistakes which is floating on the surface of record or, which apparently is against the law coverable under Order XLVII, could review however, in the instant matter the grounds of review that in earlier round of litigation court fee was not paid, that the value for the purpose of Court fee and jurisdiction before the trial Court was mentioned is exempted one and that the petitioner is an old or infirm person is no ground for review of the Judgment/Order”.

07. Likewise, the Hon’ble Supreme Court of Pakistan in case titled **“Haji Muhammad Botta and others v. Member (Revenue) BOR and others”** (PLD 2010 SC 1049) has held that:

“The principles upon which a review can be granted are well settled i.e., there must be some new point based upon discovery of new evidence which could not with diligence, have been found out on the previous occasion. A review petition is not competent where neither any new and important matter or evidence has been discovered nor is any mistake or error apparent on the face of the record. Such error may be an error of fact or of law but it must be self-evident and floating on surface and not requiring any elaborate discussion or process of ratiocination. Orders based on erroneous assumption of material facts, or without adverting to a provision of law, or a departure from undisputed construction of law and constitution, may, amount to error apparent on face of the record. Error, on the other hand, must not only be apparent but must also have material bearing on fate of case and be not of inconsequential import. If judgment or finding, although suffering from an erroneous assumption of facts, is sustainable on other grounds available on record, review is not justifiable notwithstanding error being apparent on the face of the record. Where order under reviews did not appear to have been vitiated by any error on face of the record nor any other good and sufficient reason was given for review of order. Petition for review was dismissed. "Nawab Bibi v. Hamida Begum 1968 SCMR 104, Master Tahilram v. Lilaram 1970 SCMR 622, Abdul Khaliq Qureshi v. Chief Settlement and Rehabilitation Commissioner Pakistan 1969 SCMR 800, Rehmatullah v. Abdul Majid 1968 SCMR 838, Hassan Din v. Claims Commissioner 1969 SCMR 1047 (2), Qamar Din v. Maula Bakhsh 1968 SCMR 1042 (1), Muhammad Akram v. State 1970 SCMR 418, Muhammad Akram v. State 1970 PCr.LJ 909, Zulfikar Ali Bhutto v. The State 1979 SCMR 427, Rizwan Co-operative Society Ltd. Custodian of Evacuee Property 1978 SCMR 449, Farzand Ali v. Muhammad Arif

**1979 SCMR 281, Rashiduddin Qureshi v. State 1979 SCMR 99.”**

**08.** While deriving the wisdom from the principle as enunciated by the Hon’ble Supreme Court, it can safely be held that at the time of hearing of writ petitions, neither the approved site plan was available on record nor the petitioner could produce the same even at the time of arguments, as such, this is not the fact which was available at that time but with due diligence have not been found out that is why the petitioner when realized has obtained the certificate issued by TMA regarding the alleged sanction for reconstruction allegedly granted to her on 19.03.2015. Moreover, the Hon’ble Supreme Court in case titled **“Mian Rafiq Saigol and another vs. Bank of Credit and Commerce International (Overseas) Ltd. And another”** (PLD 1997 SC 865) has held:

**“It is now well-settled that the exercise of review Jurisdiction does not mean a rehearing- of the matter and that as finality attaches to the orders a decision even though it is erroneous per se, would not be ground to justify its review. Accordingly, in keeping with the limits of the review jurisdiction it is futile to reconsider the submissions which converge on the merits of the decisions”.**

**09.** Accordingly, this document for the first time was placed on record as such, cannot be considered to have been placed on file in accordance with law especially when the respondents have not been given an opportunity to go through from it and when no witness from the office concerned was produced no findings to the credibility of certificate pertaining to the sanction allegedly granted to the petitioner can be rendered at this stage. The petitioner has relied upon the judgment of the apex Court in case titled **“Qamar Din vs. Mst. Taleh Begum”** (1980 SCMR 608) wherein, their lordships have held

that **“no prejudice would be caused by filing of sanction subsequently before closing of case”**. In the matter in hand, neither the petitioner has produced any such sanction granted to her before the learned Rent Controller nor before the learned appellate Court, so much so that during the course of arguments, when learned counsel for the petitioner was asked about any such sanction with particular date, he was unable to produce the same even before pronouncement of the order. Similarly, in the case of **“Muhammad Akbar Khan and another vs. Dr. Muhammad Rafique etc”** (1980 SCMR 483), the Hon’ble Supreme Court has held that **“it is immaterial whether the forwarding letter of Municipal authority concerned is produced or not, if Court is satisfied that the plan produced is, indeed a sanction plan as required by law is sufficient”**. The petitioner in the instant case has not produced any sanction in order to determine as to whether it is valid, genuine or otherwise, therefore, the case law relied upon by the petitioner is of no help to her.

10. Another intriguing aspect of these petitions is the period of limitation within which review application ought to have been filed. Article 162 of the Limitation Act, 1908 provides 20-days limitation commencing from the date of order, to file an application for review of the judgment, which reads as:

<b>162. For a review of judgment by a High Court in the exercise of its original jurisdiction.</b>	<b>Twenty days</b>	<b>The date of the decree or order.</b>
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11. It appears from record that the order was announced on 07.09.2020 and the petitioner has applied for attested copy of the

judgment and order on 28.09.2020 and on the same day the copies were provided to her but even then she opted to file these petitions on 17.10.2020, therefore, after excluding the day on which she applied for attested copies and obtained the same, in accordance with section 12(2) of limitation Act 1908, these review petitions were filed on 39<sup>th</sup> day, as such, there is a delay of 19 days and petitioner has not been able to explain the same with plausible reason. After obtaining the attested copies on 28.09.2020, she waited for another 19-days in filing the review petition. It is well settled law that for condonation of delay, the applicant is required to explain each day with proper justification whereas, the petitioner has not been able to place sufficient material for condonation of delay, as such, these petitions are barred by time. In *Sheikh Muhammad Saleem's* case (PLD 2003 SC 628) it was held that:

**“The delay in filing the instant appeal was seemingly due to mere negligence and carelessness of the appellant who failed to pursue his cause with due diligence and care as such he is not entitled for any indulgence by this Court. In case of almost identical nature reported as Raheem Bakhsh v. Pathani (PLD 1985 SC 324), this Court refused to condone delay by observing that where on the day period or limitation expired, copies of the impugned judgment were available with appellant and appeal could have been filed in time, delay regarding time consumed between preparation of copies and its delivery was condoned but each day after expiry of period of limitation not having been satisfactorily explained, appeal held liable to be dismissed as time-barred.**

**5. The argument of the learned counsel for the appellant that since valuable property is involved, therefore, delay be condoned, is least convincing as such a ground hardly constitutes a sufficient cause for condonation of delay. In Mst. Hajran v. Sardar Muhammad (PLD 1970 SC 287), it has been held that involvement of valuable rights does not furnish a proper ground for condonation of delay in a civil matter. In yet another case titled WAPDA v. Aurangzeb (1988 SCMR 1354), it has been laid down by this Court that after the prescribed period of limitation has elapsed, the door of justice is closed and no plea of injustice, hardship**

**or ignorance can be of any avail unless the delay of each day is properly explained and accounted for.”**

**12.** Learned counsel for the petitioner has placed reliance on the case law reported as *PLJ 2004 SC 435* and *PLD 2005 SC 315* but the principle enunciated by the apex court both the same are distinguishable as neither the petitioner has based her plea on the point of misconstruction of law, misreading and non-reading of record nor it was the matter of dismissal of petitioner’s appeals was on the point of limitation.

**13.** Learned counsel for the petitioner has not been able to point out any apparent error which is floating on the surface of record or any ground or a fact which was available on record but neither it was agitated nor considered by the Court for the purpose of review of the judgment in accordance with section 114 read with Order XLVII Rule 1 of CPC, therefore, I am not inclined to admit and allow these review petitions, as such, this and the connected review petitions are dismissed being without substance.

**14.** Before parting with the judgment, it must be mentioned that though the applications of the petitioner for ejection of respondents were dismissed by the learned appellate Court through its judgment dated 11.10.2019 leaving the petitioner at liberty to submit the fresh application on the ground as provided under section 13(2)(vi) of the West Pakistan Urban Rent Restriction Ordinance after obtaining requisite approval from concerned authority and the order of the learned appellate Court was maintained through judgment under review and it appears that the petitioner earlier approached to the learned Rent Controller for ejection on 04.06.2015 but her

applications were turned down by this Court, therefore, it is held on presentation of fresh applications and after appearance of respondents/tenants, the learned Rent Controller shall decide the ejection applications within a period of three months in accordance with the judgment of the apex Court in case titled "*Barkat Ali vs. Muhammad Ehsan and another*" (2000 SCMR 556).

**Announced**  
**12.07.2021.**

Himayat,CS

**J U D G E**