

JUDGMENT SHEET

IN THE LAHORE HIGH COURT, RAWALPINDI BENCH,
RAWALPINDI,
JUDICIAL DEPARTMENT.

C.R. No.675-D/2012.

Mushtaq Hussain
Versus
Muhammad Azam

Date of Hearing	26.09.2016.
Petitioner By	Qazi Afzaal Ahmed, Advocate.
Respondent By	Nemo.

MUHAMMAD AMEER BHATTI, J:- This revision petition is directed against the judgment and decree dated 24.11.2010 and 21.02.2012 passed by both the learned Courts below, whereby petitioner's suit for possession through Preemption and appeal whereof were dismissed on account of deficiency in the evidence with regard to *Talb-i-Ishhad*.

2. I have examined record of the case with the assistance of learned counsel for the petitioner and it is found that the postman, who delivered the postal documents upon the respondent-defendant-vendee to prove the factum of service of notice of *Talb-i-Ishhad*, had not been produced by the petitioner, which . Learned counsel for the petitioner by placing reliance on the case law reported in Hameedullah Khan and others vs. Mst. Zeenat Khatoon (2008 SCMR 1444) and Ghulam Abbas and

another vs. Manzoor Ahmad and another (2008 SCMR 1366) submits that the Postman was not required to be produced in the witness box. In this regard, suffice it to say that the benefit as claimed by the petitioner granted in referred two pronouncements, cannot be bestowed to the present petitioner in presence of latest case-law, articulated in judgments reported in Allah Ditta's case (2013 SCMR 866) and Khan Afsar vs. Afsar Khan and others (2015 SCMR 311), wherein it was held that the production of Postman was mandatory requirement in order to prove the factum of service of notice of *Talb-i-Ishhad*, failing which the suit could not be decreed. Since the deficiency is floating on the surface of record, therefore, it is held that petitioner's alleged superior right of pre-emption stood extinguished in view of the ratio decidendi by Hon'ble Supreme Court of Pakistan in referred case law. Thus, this petition has no merits and is dismissed accordingly. No order as to costs.

(MUHAMMAD AMEER BHATTI)
JUDGE.

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