

Stereo. HCJDA 38
Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

Writ Petition No.232496 of 2018

Nawaz Sharif Social Security Hospital
Versus
Additional District Judge, Lahore etc.

JUDGMENT

Date of Hearing:	22.11.2018.
Petitioner by:	Mr. Saqib Mubarik Bhatti, Advocate
Respondents No.3 to 5 by:	Pir Masood Ahmad Chishti, Advocate

CH. MUHAMMAD IQBAL, J:- Through this writ petition, the petitioner has challenged the validity of order dated 24.05.2018 passed by the learned Civil Judge, Lahore whereby application under Order VII Rule 11 CPC filed by the petitioner was dismissed and also assailed the order dated 18.08.2018 passed by the learned Additional District Judge, Lahore who dismissed the civil revision of the petitioner.

2. Brief facts of the case are that the petitioner and respondents entered into license agreement regarding affiliation of University College of Medicine & Dentistry with petitioner Nawaz Sharif Social Security Hospital Multan Road, Lahore on 08.11.2005 for a period of 10 years. The University was allowed to avail the medical facility of said hospital for teaching purposes to its students. The petitioner issued first notice dated 22.01.2011 to respondents No.3 to 5 to vacate the hospital premises after the expiry of the stipulated period of the agreement. A subsequent

notice dated 14.10.2017 was also issued for vacation of the premises. Respondents No.3 to 5 filed suit for declaration alongwith permanent injunction. The petitioner filed application under Order VII Rule 11 CPC for rejection of the plaint which was contested by the respondents and the learned Civil Judge, Lahore dismissed the said application vide order dated 24.05.2018. The revision petition of the petitioner was also dismissed by the learned Additional District Judge, Lahore vide order dated 18.08.2018. Hence, this writ petition.

3. Learned counsel for the petitioner submits that period of agreement has been expired and respondents No.3 to 5 did not fulfill the terms and conditions of the said agreement; that suit for declaration is not maintainable under Section 42 of the Specific Relief Act but the learned courts below illegally and unlawfully dismissed the application under Order VII Rule 11 CPC as well as Revision Petition of the petitioner;.

4. Learned counsel appearing on behalf of respondents No.3 to 5 submits that concurrent findings are established in favour of the respondents which gains sanctity in the eyes of law; that the respondents fulfilled all the terms and condition of the agreement and no illegality has been committed.

5. Admittedly, an agreement dated 8th November 2005 for affiliation of University College of Medicine & Dentistry/respondent No.3 with the petitioner's Hospital was executed between the parties after settlement of terms and

condition inter-alia the most relevant stipulation (clause, 14, 15, 20, 22 & 24) whereof are as under:-

AGREEMENT FOR AFFILIATION OF UNIVERSITY COLLEGE OF MEDICINE & DENTISTRY WITH SOCIAL SECURITY HOSPITAL, MULTAN ROAD, LAHORE

xiv. University College of Medicine & Dentistry, the party of the second part shall pay an amount of Rs.5,00,000/- (Rupees five hundred thousand only) in advance to the party of the first part as affiliation fee.

xv. University College of Medicine & Dentistry, the party of the second part shall pay a sum of Rs.6,00,000/- (Rupees six hundred thousand only) to the Chief Executive of Social Security Hospital Multan Road Lahore per month for payment to the employees of hospital other than those receiving honorarium.

xx. The Agreement shall be for 10 years extendable with mutual consent of both the parties after expiry of this period. While for termination of this agreement, the same shall be done with a 05 years prior notice which shall not be served in first 05 years of the agreement meaning thereby that this agreement shall be irrevocable for first 10 years.

xxii. Neither party of the first part nor party of the second will engage each other into litigation.

xxiii. If any additional facility is required by the hospital, party of the second part shall provide the same with mutual consent.

xxiv. In case any issue arises, it will be sorted out between the chief Executive and the Dean, Faculty of Health Sciences. However, if the same is not resolved at local level, it will be referred to the Commissioner, PESSI, whose decision shall be final.

The above agreement was terminable under clause xx whereof after expiry of period of five years from execution of the agreement by giving 5 years notice in advance from terminus date. During existence of the above arrangement, the petitioner served notice on 22.01.2011 for termination as well as the non-extension of agreement as per clause XX of the agreement. The said notice dated 22.01.2011 is reproduced as under:-

“The undersigned wants to bring into your kind notice that PESSI intends to establish its own Medical College for which the Institution requires Nawaz Sharif Social Security Hospital Lahore

to be attached with the proposed Medical College as per requirement of PMDC.

Clause XX of the agreement between PESSI and UCMD reads as:

"The Agreement shall be for 10 years extendable with mutual consent of both the parties after expiry of this period. While for termination of this agreement, the same 5th be done with a 05 years prior notice which shall not be served in first 05 years of the agreement meaning thereby that this agreement shall be irrevocable in first 10 years".

It is, therefore, requested that the Nawaz Sharif Social Security Hospital Lahore may kindly be vacated within five years of issuance of this notice."

As per the agreed stipulation of the agreement the full tenure of the agreement was completed on 08.11.2016 and respondents were under obligation to vacate the demised premises. Respondents filed application to the Commissioner Punjab Employees Social Security Institution (PESSI) for extension of agreement of affiliation with the petitioner's Hospital on 22nd March, 2017. For ready reference, letter whereof is reproduced as under:-

It has been an honor and privilege for us to enter in the 'Agreement for Affiliation of University College of Medicine and Dentistry (UCMD) with Nawaz Sharif Social Security Hospital (NSSSH), Multan Road, Lahore' vide a formal document dated 8th November, 2005 (Annex-I). This Agreement is for ten (10) years period w.e.f from the day of recognition of UCMD by Pakistan Medical and Dental Council (PMDC) (Annex II). On 6th June, 2007 vide a Notification in the Official Gazette the recognition was done (Annex-III). In view of the foregoing, the Agreement will be maturing on 5th June, 2017.

2. It gives great pleasure to mention that during the aforesaid period of almost 12 years, our relationship with NSSH and PESSI, has been exemplary and marked with mutual understanding, peaceful cooperation and harmony. We have lived up to our commitments and will continue to do so in future. Since the coming in force of the Agreement till to date, we have incurred an expenditure of about Rs.691.213 million on NSSH, Lahore (Annex-IV). In return we earned excellent goodwill and harmony without asking for any financial gains.

3. Regarding renewal of the present Agreement, I invite your kind attention to Clause (xx) of the Agreement that mentions as under:-

“The Agreement shall be for 10 years extendable with mutual consent of both the parties after expiry of this period. While for termination of this agreement, the same shall be done with a 05 years prior notice which shall not be served in first 05 years of the agreement meaning thereby that this agreement shall be irrevocable for first 10 years” (Annex-I).

4. The underlying principle being that a student who joins UCMD should not be deprived of his / her clinical training at NSSHL for the duration of his studies i.e. for five (05) years from his date of admission. The same goes for students who have attained admission in November, 2016.

5. The University of Lahore will like to renew the Agreement with mutual consent of NSSH for a further period of ten years i.e. till 06th June, 2027 as per aforesaid Clause (xx). Meanwhile, we look forward to your continued cooperation and benevolence in the matter.

With profound regards.

But despite the above request no extension was granted in favour of the respondents-UCMD. On 14th October, 2017, petitioner served another notice upon the respondents to vacate hospital premises and a reminder dated 21st October, 2017 was also issued regarding the payment of outstanding due against respondent. The details of outstanding liabilities mentioned in the letter dated 21.10.2017 are reproduced as under:-

“Reference to PESSI Head Office letter No.SS.MP.(MA-Afft)/17/4362 dated 19.10.2017 on the subject cited above. I have been directed vide letter referred above to advise you to pay the outstanding liabilities / dues towards Nawaz Sharif Social Security Hospital Multan Road Lahore as follows:-

Sr. No.	Serial Number of Affiliation Agreement	Outstanding Liability with Period
1.	XVII (welfare fund) @ Rs.1,00,000/- per year	Rs.7,00,000/- (from 2010-11 to 2016-17)
2.	XXV (Utility Bills) @ Rs.15,000/- per month	Rs.2,85,000/- (from April, 2016 to October, 2017)
3.	XV (Honorarium to staff) @ Rs.8,52,500/- per month	Rs.25,57,500/- (from August, 2017 to October, 2017)
4.	XVII (Honorarium to specialists and admin staff) @ Rs.3,15,020/- per month	Rs.9,45,060/- (from August, 2017 to October, 2017) Rs.44,87,560/-

You are further advised to fulfill contractual obligation regarding the establishment of state-of-art Biomedical Workshop (Agreement Clause No.IX) and Medical Library (Agreement Clause No.XVI).”

Again on 28th February, 2018 the petitioner also served notice for non-compliance of the terms of agreement settled between the parties, such as non-supply of biomedical equipment, making no arrangement for the up gradation of qualification of the doctor, non-establishment of comprehensive library establishment of welfare fund of worker and employees of the Hospital. The text of said notice is reproduced as under:-

“Kindly refer to the subject cited above. It is for your kind notice that since the establishment of an agreement between Nawaz Sharif Social Security Hospital Multan Road Lahore and University College of Medicine & Dentistry (UCMD), compliance for the following clauses is still pending on your part:-

Clause No. VIII. University College of Medicine and Dentistry (UCMD) Lahore (party of the second part) shall provide deficient biomedical equipment to SSH with mutual consent and equipment thus provided will ultimately be property of Social Security Hospital, Multan Road Lahore.

Clause No. XIII University College of Medicine and Dentistry (UCMD) Lahore party of the second part shall offer courses to the doctors of the party of the first part for the up-gradation of their qualifications and capacity building of the institution.

Clause No. XVI University College of Medicine and Dentistry (UCMD) Lahore party of the second part shall establish a comprehensive medical library as per standards of the Pakistan Medical and Dental Council which will be the property of the party of the first part ultimately.

Clause No. XVIII University College of Medicine and Dentistry (UCMD) Lahore the party of the second part shall establish a welfare fund for the secured workers and deserving employees of the hospital. The initial capital will be Rs.5.00.000/- and subsequently Rs.1,00,000/- shall be donated in this fund by the party of the second part every year.

Clause No. XXI A computerized setup with complete networking of different sections of Social Security Hospital, Multan Road Lahore shall be established by party of the second part in due course of time.

Clause No. XXIII If any additional facility is required by the hospital, party of the second part, shall provide the same with mutual consent.

You are therefore requested to ensure compliance of above referred clauses of the agreement in true letter and spirit at the earliest, please.”

Despite all above notices and correspondence respondents contumaciously remained unresponsive to the said notices and also defaulted in payment of Hospital dues but it keep on utilizing the Hospital premises without any legal right or permission of the petitioner.

At the complete disregard to the settled terms and conditions of the agreement as well as all above factums respondents marched ahead and filed a suit for declaration alongwith permanent injunction against the petitioner. In Para-3 & 4 of the plaint respondents took a summersaulting stance of obtaining the Medical Hospital Premises on rent @ Rs.6,00,000/- per month and paid Rs.5,00,000/- as advance on the basis of agreement dated 8th November, 2005. For ready reference, Para-3 & 4 of the plaint is reproduced as under:-

“3. That the defendants entered into an agreement with the plaintiffs providing hospital premises to the plaintiffs for medical education against the monthly rent of Rs.6,00,000/- per month and also paid an amount of Rs.5,00,000/- as advance amount, vide agreement dated 8th November, 2005 for initial period of 10 years, which is extendable with mutual consent of the parties.

4. That it is important to be added here that hospital premises was taken on rent by the plaintiff for teaching medical student and as the period of one batch for MBBS student is 5 years, therefore, the Clause 20 was specifically agreed between the parties whenever if the defendants require eviction of the hospital, they would gave 5 years notice4, so that the education of MBBS students may not be disturbed.”

Respondents admitted the agreement dated 8th November 2005 which was initially for a period of 10 years extendable with consent of the petitioner. As per Clause XIV of the said agreement, University College of Medicine & Dentistry (UCMD) was under obligation to pay Rs.5,00,000/- in advance as affiliation fee and under Clause XV of the agreement it was the obligation of respondents to pay Rs.6,00,000/- per month to the petitioner Hospital for payment to the employees of hospital other than those who are receiving honorarium. Respondents paid Rs.5,00,000/- as affiliation fee as Rs.60000/- per month as the monthly salaries of employees of the hospital. From applying microscopic scanning of the above admitted document of the agreement and its entire stipulation it can be legally inferred that the agreement was a license and unilateral presumption of the respondent that the agreement as a rent deed is not believable. Moreover the respondents on one side assert that they are tenants whereas on the other hand admits the agreement which is mere a license agreement and both stances of respondent are altogether stand in different legal parlances, as such, principle of approbate and reprobate is fully applicable upon this case. Reliance is placed on the case of A.R. Khan Vs. P.N. Boga through Legal Heir (PLD 1987 SC 107). For ready reference, relevant portion is reproduced as under:-

“It is a well-accepted principle that a party cannot both approbate and reprobate. He cannot to use the words of Honeyman, J., in *Smith v. Baker* (S C 350) at the same time blow hot and cold. He cannot say at one time that the transaction is valid and thereby

obtain some advantage to which he could only be entitled on the footing that it is valid, and at another say it is void for the purpose of securing some further advantage. See also per Lord Kenyon, C.J., in *Smith V. Hodson* (2 Sm. L C 140).”

Reliance is also placed on the case reported as *Federation of Pakistan Vs. Amir Hamza* (2001 SCMR 1959), relevant portion whereof is reproduced as under:-

The very factum of his invoking jurisdiction of the Tribunal and preferring proceedings before this Court, negates legal and constitutional objections raised by him. It may be observed that ‘the appellant’ cannot be permitted to approbate and reprobate in the same breath i.e. to challenge the constitutionality and jurisdiction of forum which he has himself invoked for seeking relief under the law.

In another case titled as *Overseas Pakistanis Foundation & Others Vs. Spn. Ldr. (Retd.) Syed Mukhtar Ali Shah & Another* (2007 SCMR 569), the August Court of the country observed as under:-

It is also a settled law that nobody is allowed to approbate and reprobate as law laid down by this Court in Ghulam Rasool’s case PLD 1971 SC 376.

6. Furthermore, suit was filed on the basis of misrepresentation of the record as the stance taken in the suit is not in line with the agreement executed between the parties which is an admitted document. As per the stipulation of the agreement it was kind of license whereby a permission was granted to the respondents to avail the service of teaching Medical Doctor and other staff by fixing a specific period of ten years and the said period of affiliation has already been expired which factum is admitted by the respondents as per their letter dated 22nd March 2017. Admittedly, agreement between the parties has expired in the year 2016 and no renewal has been

accorded by the competent authority, as such, the respondents have no right to retain the possession of the hospital on the basis of restraining order passed by the learned civil Court.

Even otherwise under Section 10 of the Central Government Lands and Buildings (Recovery of Possession) Ordinance, 1965 (Ordinance No.LIV of 1965) and the Punjab Government Lands and Buildings (Recovery of Possession) Ordinance, 1966 (W.P. Ordinance IX of 1966), the jurisdiction of the civil Court is barred to issue any restraining order. For ready reference, Section 10 whereof is reproduced as under:-

“10.Jurisdiction of Civil Courts barred.— No Civil Court shall pass an order in any suit or proceeding granting a temporary or interim injunction restraining Government, or any authority or officer authorised by it, from taking possession of any land or building under this Ordinance.”

The Hon’ble Supreme Court of Pakistan in a case reported as M.A. Naser Vs Chairman, Pakistan Eastern Railways & Others (PLD 1965 SC 83) resolved this controversy and declared that in such like cases where licensee is entitled to a reasonable notice in accordance with the provisions of section 63 of the Easements Act, no injunctive order can be passed held as under:-

“From the above provisions' it is clear that this agreement merely conferred a right to carry on business of catering in the Refreshment Rooms and on the Buffet Cars. They were not given any general right of occupation but only a right to use the Refreshment Rooms allotted to them for the exclusive purpose of catering refreshments. Such a right does not amount to easement as defined in section 4 of the Easements Act or an interest in the property. Nor can it be regarded as a licence ‘coupled with a transfer of property’ within the meaning of section 60 of the Easements Act. Nor can it be suggested that the Contractor was required ‘to execute any work of permanent character’ in connection with the business. No doubt his business may involve complex arrangements for continued supply of refreshments both

solid and liquid but this cannot be regarded as “execution of a work of permanent character”.

Mr. Pal faintly suggested that provision regarding assignment of the benefits of the agreement indicates that it was intended to be an irrevocable licence. This suggestion, however, overlooks the fact that such assignment was only permissible with the consent of the Administration. After fully examining the provision of the agreement we have come to the unhesitating conclusion that this licence does not fall either within clause (a) or (b) of section 60 of the Easements Act and therefore, it was revocable at the will of the grantor. We may, however, point out that there may be cases where parties by special contract may make the licence which is prima facie revocable under section 60 an irrevocable one, but these clauses of this agreement envisage no such intention.

Thus this being a revocable licence, the revocation thereof cannot be prevented by injunction. In a case like this the licensee is entitled to a reasonable notice in accordance with the provisions of section 63 of the Easements Act. If however, the licence is revoked without reasonable notice the remedy of the licensee is by way of damages and not by way of an injunction.

It may also be pointed out that as this contract cannot be specifically enforced, clause (f) of section 56 of the. Specific Relief Act will operate as a bar to the grant Of Injunction. Section 21 of the Specific Relief Act provides that

“The following contracts cannot be specifically enforced:
(a) a contract for the non-performance of Which compensation in money is an adequate relief;

(b).

(c).

(d) a contract which is in its nature revocable.”

Then section 56 says

“An injunction cannot be granted

(a)

(b) . . .

(c)

(d)

(e)

(f) to prevent the breach of a contract the performance of which would not be specifically enforced.”

From the above provisions it is clear that as this is a revocable licence and as adequate relief may be obtained by way of damages this contract cannot be specifically enforced and as such no perpetual injunction can be granted in this case.

7. From the perusal of agreement, it reveals that admittedly, agreement has been expired on 07.11.2016 the suit is barred under Section 42 of the Specific Relief Act, 1877 as in the absence of any agreement respondents have no right which could be enforced through process of any law as the petitioner refused to extend further period of agreement and the information regarding the non-further extension of the period was disclosed upon the respondents through notice dated 22.01.2011 as well as through subsequent correspondence and after expiry of stipulated period no enforceable rights are attached with the said agreement whereas the respondents by dint of its muscle and illegally are occupying the premises of the Hospital and unilaterally enlarge the period whereas the life of a license agreement is restricted or limited only till existence of the permission of the licensor. Reliance is placed in a case reported as M.A. Naser Vs Chairman, Pakistan Eastern Railways & Others (PLD 1965 SC 83) wherein Hon'ble Apex Court held as under:-

Some arguments were advanced to show that initial notice of termination of the contract was waived by the telegram dated 19th March 1962 and that the period of contract was extended by another six months. It was therefore, contended that there was an obligation on the Railways to give further notice of 6 months. It seems that by reason of the request of the Contractor the Railways granted him 6 months more to leave the Railway premises and to remove his goods therefrom. The Contractor then submitted application for a fresh catering contract in respect of those very Stations of which he was the then contractor and his application was granted in respect of some of those Stations. In view of our finding that the present suit is not maintainable it is not necessary for us to express any opinion on the questions: Whether it was an agreed variation or novation of a Contract or a mere extension of time to enable the Contractor to fulfill his obligations under the contract, and whether his subsequent conduct would amount to estoppel, waiver and acquiescence. These questions may be agitated in a properly framed suit. It will

then also be for consideration whether the plaintiff who managed to continue as a catering contractor for about two years even after termination of the contract can legitimately complain of want of reasonable notice.

In the suit there was also a prayer for a declaration under section 42 of the Specific Relief Act that the contract in question was still subsisting. The learned counsel has not pressed this point before us. Under the provisions of section 42 of the Specific Relief Act a person entitled “to any legal character” or to “any right to property” can institute for a declaratory relief in respect of his title to such legal character or right to property. It will therefore, suffice to say that section 42 does not contemplate a suit like the present one.”

This Court resolved this question in a reported case titled

Muhammad Hayat Khan Vs Province of Punjab through

Secretary Communication and Works & Others (2007 YLR 719)

wherein it is held as under:-

“9. A perusal of the aforesaid provisions of the contract when read together leave little room for doubt that period of the contract could be extended for a further period of two years subject to only two conditions firstly, with the consent of the parties, and secondly with the approval of the competent authority. It is not even the case of the petitioner that the petitioner alone had a unilateral right for the extension of the contract nor are the provisions of the contract reproduced above couched in such language which would imply such a right. There is nothing in the terms reproduced above which can be read to matter that either party can force the other to continue with the contract for an extended period without its consent. A perusal of the plaint and the evidence produced by the parties make it clear and obvious that the respondents nor any officer competent or otherwise thereof ever communicated the consent of the respondents for the extension of the contract. At best it is the case of the petitioner that he made an offer for extending the contract which was admittedly never accepted. Some officers of the department in their internal correspondence only recommended the extension vide letter dated 6.6.2005 Exh.P.8 the petitioner was informed that the contract cannot be enhanced and his offer has been declined. Thus, in the absence of the consent of the respondents to the extension of the contract no right was conferred upon the petitioner which came within the purview of section 42 of the Specific Relief Act, hence the first appellate Court has rightly held that the suit was not maintainable and liable to be dismissed.”

In another case titled Messrs Recto International through Partner

Vs Messrs Pakistan Telecommunication Company Ltd. through

Director Telegraph & Another (2008 CLC 562) wherein it has

been held that the time for carrying on the contract has already expired. The declaration sought to be obtained is misconceived being hit by the provisions of section 42 of the Specific Relief Act. Even otherwise, after expiry of the period, no restraining order is called for as the licence agreement stood expired with afflux of time. In another case titled Syed Ali Asghar Shah Vs Pakistan International Airline Corporation through Managing Director & Others (2016 CLC 189) it is held as under:-

“6. It would not be out of place to mention, and without prejudice to the fact, that whether any vested right accrues on the basis of Letter of Intent or not, even otherwise if an agreement has been in field, the plaintiff could not have sought specific performance or enforcement of the agreement/contract, beyond the period stipulated in the Letter of intent/contract. Therefore, if enforcement of the said agreement cannot be sought, the necessary corollary is that no injunctive relief can be asked for. At the most the plaintiff may have a case of damages, owing to the alleged cancellation/modification of Letter of intent. However, the plaintiff cannot be allowed to continue and keep working on the basis of interim orders, even beyond the period stipulated in the Letter of Intent/contract.”

Reliance is placed on the case reported as Saeed Ahmad Malik Vs Naval Estate Officer (1989 CLC 1204) (D.B), in which this Court held as under:-

“The plain reading of clause (b) of the above section would clearly show that such licence as in the present case does not become irrevocable and can always be revoked at the option of the licensor. The remedy of the licensee, therefore, would not lie in his suit for declaration but he would be entitled to damages, if any, as held in the case of M.A. Naser v. Chairman, Pakistan Eastern Railways and others PLD 1965 SC 83 and in the case of Muhammad Hashim v. Zulfiqar Ali Khan and others PLD 1963 Lah. 418. We, therefore, are clear in our mind that in the instant case the appellant's suit for declaration was not maintainable under the provisions of section 42 of the Specific Relief Act. We also agree with the learned single Judge that the relief of injunction was barred under the provisions of section 10 of the Central Government Lands and Buildings (Recovery of Possession) Ordinance, 1965.

6. Even otherwise, the appellant has been dispossessed from the plot in dispute, as asserted in the counter-affidavit filed by the respondents, which fact has not been controverted by the appellant.

He has not filed any affidavit-in-rejoinder to this effect. We, therefore, find no substance in the present appeal, which is dismissed in limine with no order as to costs.”

Reliance can also be placed on the cases reported as Dr. Munir Ahmed, M. B. B.S. Medical Officer Vs Chairman, House Allotment Committee, Government of Baluchistan, Quetta & Another (1983 CLC 1783) & Imtiaz Hussain Vs Govt. of Pakistan through Secretary, Ministry of Works, Estate, Islamabad & 2 Others (1992 CLC 1122).

8. Further, respondents No.3 to 5/plaintiffs in their plaint took stance that the petitioner/defendants Hospital entered into an agreement with the plaintiffs University for providing hospital premises on rent. So far as the arguments of the learned counsel for the respondents that in reply to Para-4 of the plaint petitioner admitted that respondents university is tenant over the premises, suffice it to say that any admission made against the record or against admitted document does not create any right to declare the respondents as tenants of the petitioner whereas agreement is only for the affiliation of University College with the petitioner Hospital and if any perverse admission is made in the pleadings same may be withdrawn with the permission of the Court. The Hon’ble Supreme Court of Pakistan in a case reported titled as Muhammad Zahoor & Anothers Vs. Lal Muhammad & 2 Others (1988 SCMR 322), held as under:-

“The Honourable Supreme Court was pleased to hold that admissions are not conclusive proof of matters admitted- Admission made by mistake could be permitted by Court to be

withdrawn by amendment, even if such admission was made in pleadings.”

In the case of Ahmad Khan Vs. Malik Fazal Dad (Represented by Legal Heirs) (1983 CLC 74 (Lahore), this Court has held as under:-

“Court may, in its discretion, under S.58 Evidence Act, require any fact, admitted, to be proved otherwise than by such admission.”

In another case titled Pakistan Development Corporation Ltd. Vs. The Bank of Bahawalpur Ltd (PLD 1960 (W.P.) Karachi 885).

“Admission according to section 31, Evidence Act, are not conclusive proof of the matters admitted. It is always open to a person who has made an admission to show that he had done so under some mistake, misapprehension or miscalculation. An admission unless coupled with other facts which might constitute an estoppel, cannot form the foundation of a right. An admission simpliciter is merely a piece of evidence and can certainly be controverted and demolished”

9. Admittedly the license agreement stood expired on 08.11.2016 which has never been renewed or extended any further whereas the notice for termination of agreement was issued on 22.01.2011 and many reminders whereof were also served subsequently for vacation of the premises which has never been challenged before the mutually settled adjudicating forum as envisages under Clause XIV of the agreement during the existence of the license agreement. The instant suit has been filed after two years of the expiry of the lease agreement which in itself vitiate the cause of action of the respondents who have no right left enforceable under any law. Further for the sake of argument if it is presumed the agreement was a kind of rent deed

even then the jurisdiction of civil Court is barred. Moreover as discussed above Civil Court of general jurisdiction are precluded under Section 10 of Building Act, 1965 as well as the same section of the (Punjab) Govt. lands and Building Act Recovery of Possession Ordinance, 1966 ibid to issue any injunctive order against the authority who is intending to retrieve the possession of the official buildings, as such, it can conveniently observed that the suit is barred by law as well as suffer from the lack of cause of action and provision of Order VII Rule 11 CPC are fully applicable to the suit of the respondents. All the above material fact and legal aspects of the matter have not been considered by the lower judicial fora and committed glaring illegality in dismissing the application under Order VII Rule 11 CPC which finding have no sanctity in the eyes of law. Both the learned courts below erroneously dismissed the said application for rejection of the plaint under Order VII Rule 11 CPC.

10. For what has been discussed above, the instant writ petition is allowed. Order dated 24.05.2018 passed by the learned Civil Judge, Lahore and order dated 18.08.2018 passed by the learned Additional District Judge, Lahore are set aside, resultantly the plaint of respondent suit is hereby rejected.

**(CH. MUHAMMAD IQBAL)
JUDGE**

Shahzad Mahmood

APPROVED FOR REPORTING.

JUDGE