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JUDGMENT SHEET
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No. 1222 of 2017

Ariba Naeem and another Versus Additional District Judge, etc.

J U D G M E N T

Date of Hearing:	20.12.2022
Petitioners by:	M/s Muhammad Munir Paracha & Zeeshan Munir Paracha, Advocates.
Respondent No.3:	Mr. Mujeeb-ur-Rehman Kayani, Advocate.
Respondent No.4:	Mr. Zubair Aslam Ghuman, Advocate.
Petitioner in W.P. No.1554/2017:	Ch. Muhammad Aslam Ghuman, Advocate.

Anwaar Hussain, J. Through this single judgment, the present as well as connected constitutional petitions bearing W.P Nos. 1365 & 1554 of 2017, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter referred to as “**the Constitution**”) are simultaneously being decided as the same involve identical questions of law and facts and have assailed the same judgment passed by the learned Revisional Court below.

2. The petitioners in the present petition (hereinafter referred to as the “**petitioners/minors**”) have filed the same through next friend, namely, Yasmin Akhtar who is admittedly their real maternal aunt. Challenge has been laid to judgment dated 06.04.2017 (hereinafter referred to as “**the impugned judgment**”) whereby the revision petition filed by respondent No.3, namely, Yasir Akhtar Abbasi (hereinafter referred to as “**the respondent/plaintiff**”) against order dated 08.10.2012 of the learned Trial Court was accepted. By virtue of order dated 08.10.2012, the learned Trial Court accepted the application filed by one Mst. Mubashara Sultan (hereinafter referred to as “**the respondent/mother**”), on her own behalf

and on behalf of the petitioners/minors, for setting aside *ex-parte* judgment and decree dated 13.09.2008 (hereinafter referred to as “***ex-parte judgement and decree***”), passed in the suit for specific performance of contract instituted by the respondent/plaintiff, on the basis of an agreement to sell dated 13.01.2004 purportedly entered into with one Naeem Akhtar Kiani, who happened to be real father of the petitioners/minors and husband of the respondent/mother and the *ex-parte* judgment and decree in favour of the respondent/plaintiff was set aside. The respondent/mother has independently filed connected constitutional petition bearing W.P No.1365 of 2017 against the impugned judgment. Whereas M/s Mumtaz City (hereinafter referred to as “**M/s Mumtaz City**”) has filed W.P No. 1554 of 2017 as its application filed under Order I, Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as “**the CPC**”) before the learned Revisional Court below was also dismissed through the impugned judgment.

3. By way of factual background, it is noted that the respondent/plaintiff instituted the suit against the petitioners/minors as well as the respondent/mother with the averments that property measuring 18-Kanal, 10-Marla originally owned by late Naeem Akhtar Kiani was sold to the respondent/plaintiff, through agreement dated 13.01.2004 @ Rs.150,000/- per kanal and total sale price amounting to Rs.2,775,000/- was paid on the spot and possession of the suit property was delivered to the respondent/plaintiff, however, the sale deed could not be executed. Said Naeem Akhtar Kiani admittedly died on 30.03.2004 where after statedly a request was made to the respondent/mother, in her capacity as legal heir of late Naeem Akhtar Kiani, to complete the transaction on her own behalf and on behalf of the petitioners/minors by way of recording and sanctioning of a mutation or through execution of a registered sale deed and when the needful was not done, the suit was instituted on 08.02.2005. The petitioners/minors were sued through the respondent/mother with the assertion that there is no adverse interest of the respondent/mother, against the petitioners/minors. The respondent/mother appeared on 28.04.2006 after publication of notice in newspaper regarding

the pendency of the suit and power of attorney was submitted on her behalf as well as on behalf of the petitioners/minors and the matter remained pending for filing of written statement when on 14.12.2006 *ex-parte* proceedings (hereinafter referred to as “***ex-parte* proceedings**”) were initiated and thereafter, evidence of the respondent/plaintiff was recorded who appeared himself along with one of the marginal witnesses of the agreement and as a consequence thereof, *ex-parte* judgment and decree was passed. On 01.11.2011, an application for setting aside *ex-parte* judgment and decree was filed by the respondent/mother with the averments that her daughter got unwell and she could not vigilantly pursue the matter. The said application was vehemently contested by the respondent/plaintiff on the ground that the same is badly time barred, both in terms of Article 163 of the Limitation Act, 1908 (hereinafter referred to as “**the Act 1908**”) and/or Article 181 thereof, as the said application for setting aside *ex-parte* judgment and decree has been filed after lapse of three years. The learned Trial Court accepted the application of respondent/mother *vide* order dated 08.10.2012 and the *ex-parte* judgment and decree in favour of the respondent/plaintiff was set aside against which the civil revision was filed by the respondent/plaintiff that was accepted, *vide* the impugned judgment and accordingly, order of the learned Trial Court dated 08.10.2012 was set aside. During the pendency of revision petition filed by the respondent/plaintiff, application under Order I Rule 10 of the CPC was filed by M/s Mumtaz City with the averments that the respondent/mother has lawfully transferred the property in its favour through a mutation after having been appointed as guardian of person and property of the petitioners/minors. While passing the impugned judgment, the application filed by M/s Mumtaz City has been dismissed as well. In constitutional petition bearing W.P. No.1365 of 2017 filed by the respondent/mother, the petitioners/minors have been arrayed as *proforma* respondents, through their next friend.

4. On behalf of the petitioners/minors, Mr. Muhammad Munir Paracha, Advocate assisted by Mr. Zeeshan Munir Paracha, Advocate, submits that not only Order XXXII Rule 3 of the CPC was violated but also other provisions meant for safeguarding the interests of the minors

have been ignored. Contends that a minor cannot be proceeded *ex-parte* in a case. Further submits that the order initiating *ex-parte* proceedings and the *ex-parte* judgment and decree passed thereafter was rightly set aside by the learned Trial Court through order dated 08.10.2012, therefore, the civil revision filed by the respondent/plaintiff should not have been accepted inasmuch as exercise of the revisional jurisdiction is discretionary in nature and when substantial justice had been done by the learned Trial Court to safeguard the rights of the petitioners/minors, restraint should have been shown by the learned Revisional Court below. Places reliance on case titled “Manager, Jammu & Kashmir, State Property in Pakistan v. Khuda Yar and another” (PLD 1975 SC 678) in support of his contention. Learned counsel for the respondent/mother as well as M/s Mumtaz City, while adopting the arguments of learned counsel for the petitioners/minors add that M/s Mumtaz City is a *bona fide* purchaser for value and it dealt with the respondent/mother only after the latter had duly been appointed as guardian of person and property of the petitioners/minors.

5. Conversely, Mr. Mujeeb-ur-Rehman Kayani, Advocate representing the respondent/plaintiff submits that the respondent/mother as well as the petitioners/minors through their purported next friend namely, Yasmin Akhtar are depriving the respondent/plaintiff from the fruits of a lawful decree passed in favour of the latter inasmuch as the respondent/mother contested the suit by appearing in the same on her own and on behalf of the petitioners/minors and when the *ex-parte* judgment and decree was passed, the application was filed by the respondent/mother beyond limitation period and the reason put forth was the illness of the daughter of the respondent/mother without any supporting evidence, and therefore, the learned Trial Court erred in allowing the said application against which the civil revision of the respondent/plaintiff was rightly accepted by the learned Revisional Court below through the impugned judgment and since, in the interregnum, through the order of the Court of competent jurisdiction, the respondent/mother was appointed as guardian of property of the petitioners/minors and in her capacity as guardian of property of the petitioners/minors, admittedly the respondent/mother

alienated the property in favour of M/s Mumtaz City, the same *prima facie* shows the *malafide* intention on part of the petitioners/minors as well as the respondent/mother and the formers have now moved this Court through a purported next friend and they all are trying to hoodwink the respondent/plaintiff by abusing the process of law. Further contends that *malafide* is further evident when connected Writ Petition No.1365 of 2017 is perused inasmuch as the impugned judgment has been independently assailed by the respondent/mother and hence, the present petition filed by the petitioners/minors by next friend is not maintainable. Concludes that the purpose of revisional jurisdiction is supervisory in nature which is meant for correction of error apparent on the face of record and not to aid a litigant who is acting with malice.

6. In rebuttal, learned counsel for the petitioners/minors submits that the arguments on behalf of the respondent/plaintiff are misconceived inasmuch as it is for this Court to examine whether the present constitutional petition has been competently filed by the next friend or not, keeping in view the intention of the legislature contemplated in terms of Order XXXII, Rule 11 of the CPC whereunder it is well envisaged that a minor's interest is to be kept at the forefront in cases involving the person or property of the minor.

7. Arguments heard. Record perused.

8. The pivotal questions of law requiring determination by this Court are as under:

- i. Whether the non-representation of minor in suit and/or non-compliance of the statutory provisions regarding appointment of *Guardian ad Litem* thereof is just a procedural irregularity without causing any prejudice to the petitioners/minors?
- ii. Whether non-compliance with the provisions of Order XXXII, Rule 3 of the CPC and concomitant non-representation of the petitioners/minors render the *ex-parte judgment* voidable at the option of petitioners/minors or is void and nullity in the eye of law?

- iii. What is the effect of admitted appointment of the respondent/mother as guardian during the pendency of the proceedings, which appointment is still intact?

9. Before embarking upon the discussion and analysis of the above formulated questions of law, it would be convenient to reproduce Order XXXII of the CPC as the answer to the said questions primarily lies in examining the true import of Order XXXII in general and Rule 3 read with Rule 11 thereof in particular. Order XXXII of the CPC reads as under:

“ORDER XXXII

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

1. Minor to sue by next friend.--Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

2.

3. Guardian for the suit to be appointed by Court for minor defendant.--(1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceedings in the execution of a decree.

4.

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11. Retirement, removal or death of guardian for the suit.-

(1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

12.”

(Emphasis supplied)

Careful perusal of Order XXXII of the CPC indicates that a minor neither can sue by himself nor can he be sued without being represented by someone else. The ‘someone else’ is considered as ‘a next friend’ when a minor brings an action as a plaintiff/petitioner, whereas, it is referred as ‘a *Guardian ad Litem*’ when the minor is a defendant/respondent. In fact, this nomenclature does not matter much and the intent of the legislature is well evident inasmuch as both the next friend or the *Guardian ad Litem* represent the interest of the minor and/or are under an obligation to remain watchful and in case the *Guardian ad Litem* is not performing his duties, the Court is under a bounden duty to remove the *Guardian ad Litem* and appoint a new guardian instead.

10. How the minors are to be sued and the proceedings are to be conducted in a case has been under judicial scrutiny by the Superior Courts in Pakistan and by scanning various judicial pronouncements, following legal principles can be succinctly deduced therefrom, which are the binding guidelines that a learned Trial Court must adhere to:

- i) Once a minor is sued as a defendant, the plaintiff must file an application proposing the names of the close relatives to be appointed as *Guardian ad Litem* and if the plaintiff fails to give such names even the plaint can be rejected. Case titled “Ghulam Muhammad and another v. Muhammad Feroze and 2 others” (PLD 1983 Lahore 164) is referred in this regard.

- ii) If *Guardian ad Litem* is not appointed before passing of the decree, such a decree is nullity in the eye of law. Cases titled “Yar Muhammad v. Amnat and others” (1988 CLC 1355) and “Mst. Rooh Afza v. Sher Aman Khan & others” (PLD 1993 Peshawar 49) are referred in this regard.
- iii) The provisions of Order XXXII, Rule 3 of the CPC, regarding the representation of the minor litigants, should normally be applied strictly, however, any failure to comply with the same is a curable irregularity provided no prejudice has been caused to the minor, and his interests were duly represented by the irregularly appointed *Guardian ad Litem* or by some other defendants who had identical interest with the minor in the matters in controversy in the suit. But if it is found that the minor has been prejudiced, then it is deemed that such minor was not duly represented in the proceedings, and accordingly he cannot be regarded as a party to the said proceedings, with the result that any order or decree therein would not be binding on him and such a decree or order would be a nullity in the eye of law. Case reported as “Mashal Khan v. Fazal Karim and another” [PLD 1963 (W.P.) Pesh 93] is referred.
- iv) Without any formal appointment of *Guardian ad Litem*, the proceedings conducted in a suit are nullity in the eye of law. Case reported as “Trustees of the Port Karachi (KPT) v. Mst. Naheed and 3 others” (2013 MLD 1200) is referred in this regard.
- v) Courts being custodian of interest of the minors are required to be watchful when a mother fails to appear and defend the interest of the minors. Case titled “Mst. Fauzia Parveen alias Fauzia Tiwana v. Mst. Sahib Khatoon and others” (1988 SCMR 552) is referred in this regard.
- vi) The minors are vulnerable citizens and the Courts had inherent power, being *parens patriae*, to protect the interest of the minors, who require proper protection of the Court in terms of Principles of Policies enshrined in the Constitution, which

envisage special protection to women, children as well as the marginalized citizens as per Article 35 thereof. Case reported as “Muhammad Amjad Khan Afridi and others v. Shad Muhammad and others (PLD 2022 SC 27) is referred in this regard.

- vii) Order XXXII of the CPC visualizes no such occasion where a minor defendant can be proceeded against *ex- parte*. Case of Muhammad Amjad Khan Afridi supra is referred.

11. The above-mentioned principles, *viz.* interpretation and scope of Order XXXII of the CPC, culled down by the Courts in general and the Hon’ble Supreme Court of Pakistan in particular, clearly propel to the conclusion that the appointment of *Guardian ad Litem* in terms of Order XXXII, Rule 3 of the CPC is to protect the interest of minor. However, any irregularity in the appointment of the *Guardian ad Litem* may be overlooked as a procedural irregularity but this is subject to an overriding condition that such irregularity ought not to have prejudiced the minor and that his right to due representation in the proceedings must not have suffered any injury. Thus, it is obligatory upon the Court to overlook the procedural irregularity in the appointment of *Guardian ad Litem* where the minor has been duly represented by irregularly appointed *Guardian ad Litem*. However, where the minor is deprived of due representation, such irregularity transforms into and takes up the proportion of substantial deprivation of due process to the minor and cannot be allowed to sustain the subsequent decree or order which is void and nullity in the eye of law. Similarly, in cases where there is no duly appointed guardian and/or minor remained without proper representation, the decree, *ipso facto*, is nullity in the eye of law and void and the minor is not even required to get it set aside. The crux of the discussion is that even if the plaintiff of a suit is not coming forth with a fair approach by seeking an appointment of *Guardian ad Litem* for the minors/defendants against whom he has instituted a suit, or if a guardian is appointed and neglects to perform his/her duty towards the interest of the minors, the Courts are always under an obligation to remain vigilant and watchful to protect the interest of such minor and in

the first place ensure that a person from the near relatives (preferably father and mother) are appointed as the *Guardian ad Litem* to defend the interest of the minor and in the absence of the same or the neglect of such *Guardian ad Litem* once appointed to pursue the matter vigilantly, should appoint its own staff to act in the said capacity and, in no eventuality, the minor can be proceeded *ex-parte*. Therefore, if a minor is not effectively represented in a suit or in any proceedings, such a defect is not one of mere form, but of substance, and it goes to the root of the jurisdiction of the Court, hence, such a minor in the eye of law is not a party to such a suit or proceedings. As a natural corollary, no order or decree can be validly passed against a minor in such a suit, and any *ex-parte* proceedings conducted against him will not bind him or his estate at all.

12. In the instant case, admittedly the respondent/plaintiff instituted the suit and arrayed the petitioners/minors as defendants No. 1(B) and 1(C) and sued them through the respondent/mother who was arrayed as defendant No.1(A) and when the respondent/mother appeared and power of attorney was submitted on her own behalf, no order was passed by the learned Trial Court appointing the respondent/mother as *Guardian ad Litem*. Repeated adjournments were sought by the respondent/mother to submit written statement and the same were allowed by the learned Trial Court before passing of order dated 14.12.2006 whereby the *ex-parte* proceedings were initiated. In this manner, the learned Trial Court erred in law by abdicating its duty imposed on it under Rules 3 and 11 of Order XXXII of the CPC which clearly contemplate that if a guardian does not do his duty, the Court may remove such guardian. In the instant case, in the first place there was neither any application on part of the respondent/plaintiff to appoint the respondent/mother as *Guardian ad Litem* nor the learned Trial Court appointed her to be so and even if it is assumed that the respondent/mother had an implicit approval of the learned Trial Court to act as *Guardian ad Litem*, for the reason that she had no adverse interest against the petitioners/minors, though such approval is not permissible under the law, still when she neglected to

pursue the matter, the petitioners/minors should not have been proceeded *ex-parte* at all and some other person should have been appointed as *Guardian ad Litem* since the Courts, in such eventualities, must be mindful of their duty envisaged under Rule 11 of Order XXXII of the CPC, which in the instant case is conspicuous by its absence. Order XXXII, Rule 3 read with Rule 11 of the CPC is mandatory and imperative, and must be strictly complied with in cases where defendant is a minor. Failure on part of the learned Court to follow these mandatory provisions leads to the consequence that there is no proper party to the suit, in the eye of law, though his name appears on the record, therefore, such minor must be deemed in law to be wholly unrepresented, and consequently the jurisdiction of the Court to proceed against such a minor will be ousted and the Court will have no jurisdiction to render any judgment, or pass any order against a minor. In the present case, the respondent/mother could have been motivated with ulterior designs or negligent and proceeded *ex-parte*, however, her acts or omissions, whether with or without any *mala fide* cannot be made basis for initiation of adverse proceedings against the petitioners/minors. The *ex-parte* judgment and decree passed against the petitioners/minors was without appointment of *Guardian ad Litem*. The same might have become a curable irregularity had the petitioners/minors been properly and duly represented by the respondent/mother after she appeared. However, when she subsequently elected not to appear, the learned Trial Court was obligated not to proceed without appointment of a *Guardian ad Litem*. Hence, on this ground alone, the *ex-parte* proceedings followed by the *ex-parte* judgment and decree are nullity in the eye of law and any superstructure built thereon also falls, and the learned Revisional Court has erred in examining the matter from a different angle in which ordinary applications for setting-aside *ex-parte* decree are to be dealt with.

13. While arguing the case, a great deal of emphasis has been laid by learned counsel for the respondent/plaintiff that the respondent/mother is still validly appointed guardian of the petitioners/minors and filing of

the petition by the petitioners/minors through another next friend instead of the guardian appointed by the Court is not maintainable. The argument does not hold water and is misconceived, to say the least, on two counts. Firstly, the guardian appointed under the Guardian and Wards Act, 1890 (hereinafter referred to as '**the Act 1890**') and the appointment of *Guardian ad Litem* stand on two different pedestals. The term *Guardian ad Litem* implies guardian for the litigation (suit) appointed in accordance with law by the Court in which a suit is instituted against the minors and may be removed by the same Court in terms of Rule 11 of Order XXXII of the CPC and is confined to the same as compared to guardian appointed by the Guardian Court under the Act, 1890. Secondly, no *Guardian ad Litem* was appointed by the learned Trial Court and the decree against the petitioners/minors was passed without affording due representation to them. The learned Trial Court was obligated, at least, on non-appearance of the respondent/mother to appoint some other *Guardian ad Litem* to grant representation to the petitioners/minors for protection of their rights. Here, it is imperative to note that this Court is cognizant of the fact that an appeal or further proceedings by some *Guardian ad Litem* other than the one appointed by the learned Trial Court seem not to be envisaged unless such *Guardian ad Litem* is removed in terms of Rule 11 of Order XXXII of the CPC. In case reported as "*Raj Behari Lal and others. v. Dr. Mahabir Prasad and others*" (AIR 1956 Allahabad 310), the larger bench of the Allahabad High Court held as under:

"48. Our answer to the question referred to us, therefore, is that a minor defendant against whom a decree is passed cannot validly institute an appeal through a person other than the guardian 'ad litem' appointed by the trial Court, who has not resigned or died or been removed, provided that the appellate Court may, on sufficient cause being shown, allow an appeal to be filed on behalf of the minor by a person other than the guardian ad litem appointed by the trial Court by removing such guardian and appointing such other person as the guardian of the minor from the date of the institution of the appeal."

Where the learned Trial Court appoints a particular person as *Guardian ad Litem*, someone else may not prefer an appeal unless any of the contingency envisaged under Order XXXII, Rule 11 of the CPC occurs or

the said *Guardian ad Litem* is removed by the Court, however, the facts in the instant case are relatively different as no *Guardian ad Litem* was appointed by the learned Trial Court in the suit for specific performance instituted by the respondent/plaintiff wherein the *ex-parte* judgment and decree sought to be set aside was passed, rather the respondent/mother appeared and then subsequently chose not to appear leaving the petitioners/minors unrepresented. No *Guardian ad Litem* was appointed by the learned Trial Court, which as stated earlier, renders the decree nullity and void in the eye of law. Thus, no *Guardian ad Litem* of the petitioners/minors was in existence at the time of filing of the present constitutional petition barring their aunt as next friend from filing the same. As regards the respondent/mother having been appointed guardian by the Competent Court, the proceedings for the same are neither before this Court nor the same are under challenge in the instant proceedings. Whereas failure of the respondent/mother in protecting the rights of the petitioners/minors is well evident from the record as far as the proceedings that took place in the suit instituted by the respondent/plaintiff. Therefore, the argument subsides to irrelevancy from another perspective discussed earlier that the decree itself to the extent of the petitioners/minors is not merely voidable calling upon the petitioners/minors to get it set aside rather the same is void and nullity in the eye of law.

14. It has been also vehemently argued by learned counsel for the respondent/plaintiff that the respondent/mother has been appointed as the guardian by the Competent Court, therefore, consequences of her absence are to be faced by the petitioners/minors, however, the said appointment too cannot be so construed as to have ratified the inherent irregularity rather illegality in the *ex-parte* judgment and decree passed against the petitioners/minors without their representation. In the light of law laid down in case of Muhammad Amjad Khan Afridi *supra* this Court has inherent powers, more particularly, while exercising its constitutional jurisdiction to protect the interest of the petitioners/minors who, when sued by the respondent/plaintiff for specific performance of purported

agreement to sell executed by their predecessor-in-interest, were minors. There was a grave omission on part of the learned Trial Court by initially not appointing a *Guardian ad Litem* and treating the respondent/mother as a duly appointed guardian and later on proceeding *ex-parte* against the petitioners/minors when the former failed to appear. While considering this material fact that the petitioners/minors were not of the age of the majority at the time of the institution of the suit, the application for setting aside the *ex-parte* judgment and decree on their behalf should have been allowed and the learned Revisional Court below has erred in law by not appreciating this aspect. Even otherwise, had the petitioners/minors not even moved the Court for setting aside the *ex-parte* judgment and decree, the same was void and nullity in the eye of law as held in case of Mashal Khan *supra*. Therefore, this Court is of the opinion that present constitutional petition on behalf of the petitioners/minors has been validly filed by the next friend.

15. Adverting to the constitutional petition bearing W.P No.1365/2017 filed by the respondent/mother, it is, undisputedly, matter of record that she entered appearance in the suit and subsequently disappeared on her own behalf and as guardian of the petitioners/minors, a duty she herself assumed whereafter she willfully absented herself and failed to defend the suit on her own behalf. Moreover, she had filed a petition and got herself appointed as guardian and subsequently sold the suit property to M/s Mumtaz City, which fact is also somewhat reflective of the disregard she paid to the proceedings where she had entered appearance and pendency thereof against her. On the other hand, she averred that she could not appear on account of her daughter being not well which is not supported by any evidence. It does not appeal to logic that she was hampered to appear in the suit and was in a position to get herself appointed as guardian and subsequently sell the suit property to M/s Mumtaz City despite being in knowledge of the pendency of the suit against her but could not defend the said suit. Therefore, this Court does not concur with the cause of non-appearance by the respondent/mother and to her extent, the impugned judgment does not suffer from any illegality.

16. In the light of above mentioned discussion, this Court is of the opinion that the present petition filed by the petitioners/minors through their next friend merits acceptance and the same is **allowed** and the *ex-parte* proceedings as well as the *ex-parte* judgment and decree in favour of the respondent/plaintiff are set aside to the extent of the petitioners/minors only, whereas, connected petition bearing W.P. No.1365/2017 filed by the respondent/mother who was admittedly a defendant and an independent stakeholder in the suit property, as widow of late Naeem Akthar Kiani, could not offer any plausible reason to disappear, while watching her own interest and was extremely negligent in pursuing the interest of the petitioners/minors and to her extent, the said petition is **dismissed** and the *ex-parte* proceedings as well as the *ex-parte* judgment and decree remain intact. Insofar as connected petition bearing W.P. No.1554/2017 filed by M/s Mumtaz City is concerned, the said petition is **disposed of** having become infructuous on the ground that the *ex-parte* proceedings as well as the *ex-parte* judgment and decree in favour of the respondent/plaintiff have been set aside to extent of the petitioners/minors and matter needs to be examined by the learned Trial Court afresh, in suit for specific performance of contract instituted by the respondent/plaintiff, therefore, M/s Mumtaz City is always at liberty to approach the learned Trial Court for pursuing its interest in the suit property by filing an appropriate application, which, if filed, shall be dealt with on its own merits. The learned Trial Court shall proceed with the suit instituted by the respondent/plaintiff against the petitioners/minors from the stage where it was on 14.12.2006 when the order of proceeding *ex-parte* was passed against them and shall decide the same expeditiously, preferably within a period of 06-months commencing from the date of receipt of certified copy of this judgment.

(ANWAAR HUSSAIN)
Judge

Approved for reporting.

Judge

Announced in open Court on_____.

Judge