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IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

C.R. No.6830 of 2023

Muhammad Iqbal Gill, etc. Versus Nasir Abbas, etc.

JUDGMENT

Date of Hearing:	**06.11.2024**
Petitioners by:	Ch. Rashid Abdullah, Advocate
Respondents by:	Ch. Sarfraz Ali Dial, Advocate

JAWAD HASSAN, J. The Petitioners have filed this Civil Revision under Section 115 of the Code of Civil Procedure, 1908 (the "CPC"), challenging the judgments and decrees dated 09.01.2023 and 30.07.2021, passed by the learned Courts below, being illegal and unlawful.

2. Through this judgment, the Court will examine the illegality and irregularity allegedly committed by the learned Courts below within the revisional jurisdiction of this Court.

3. Brief facts of the case are that the Petitioners filed a suit for specific performance of an agreement to sell and for permanent injunction, with the averments that the Respondents, being in possession of 20/52 shares of land measuring 1 kanal, situated in Khewat No.86, Khatooni No.112, Khasra No. 267, as per the register haqdaran zamin for the year 2006-07, situated at Mouza Naglian, Tehsil Pasrur, District Sialkot, sold the said land for Rs.740,000/- to the Petitioners, received Rs.275,000/- as earnest money and executed an agreement to sell dated 08.06.2009 in their favour. Thereafter, the Petitioners many times asked the Respondents to receive the balance

amount and execute the sale deed in their favour, but they refused, whereupon the present suit was instituted. The learned Trial Court, after framing the issues and recording the evidence of the parties, dismissed the suit on 30.07.2021. Feeling aggrieved, the Petitioners filed an appeal before the learned Appellate Court, which met with the same fate vide judgment and decree dated 09.01.2023. Hence, this Petition.

4. Learned counsel for the Petitioners submitted that the impugned judgments and decrees are result of misreading and non-reading of evidence. Added that during pendency of Appeal, the Petitioners filed an Application under Order XLI Rule 27 CPC seeking permission to produce additional evidence. Learned counsel while drawing the attention of the Court to the impugned judgments submitted that the same are not tenable in the eyes of law because the learned Appellate Court has not only decided the Application for additional evidence but also decided the appeal on the same day i.e. 09.01.2023.

5. Conversely, learned counsel for the Respondents submitted that it is not the requirement of law that in all eventualities the learned Appellate Court should decide the Application for additional evidence separately. He further argued that the impugned judgments cannot be set aside merely on this sole ground.

6. Heard. Record Perused.

7. The nub of the matter in this case is whether the Appellate Court is obliged to first decide the application for additional evidence before adverting to the merits of the appeal. It would, thus, be apt in the first instance to attend to the above question, instead of dilating upon the merits of the case, lest it prejudice the case of either side.

8. It is evident from record that the suit was initially dismissed by the learned trial Court vide judgment and decree dated 30.07.2021, which was challenged by the Petitioners through an appeal before the learned Appellate Court. During the pendency of that appeal, the Petitioners filed an application under Order XLI Rule 27 CPC, seeking permission to produce

additional evidence. Perusal of order dated 09.01.2023, shows that although the Appellate Court dismissed the aforesaid application but it was done on the same day and at the same time as the appeal, in the following manner:

> *However, the record shows that petitioner has moved an application to obtain the said record on 01.10.2020 and on the same day the attested copies of said documents were delivered to the present petitioner Muhammad Iqbal Gill which prima facie shows that the document in question was available to the petitioner at trial stage as the learned trial court had decided the case on 30.07.2021. Therefore, the ground that has been taken by the petitioner that the said document was not available to him at the time of trial does not seems plausible. Henceforth, the said application is hereby dismissed being devoid of merits.*
>
> *Vide my separate judgment in English of even dated, the appeal in hand is hereby dismissed. …*

It is a well-established principle of law that whenever a miscellaneous application is pending before the Court, it must be decided first before finalizing the lis. Failure to decide the miscellaneous application before the final verdict would render the latter a nullity in the eyes of the law.

I. <u>SUPREME COURT OF PAKISTAN</u>:

9. As discussed above, the Appellate Court on the same date i.e. 09.01.2023, while announcing the order regarding dismissal of application under Order XLI Rule 27 of CPC also recorded in the next paragraph that *"vide my separate judgment in English of even dated, the appeal in hand is hereby dismissed."* This is against the principles consistently developed by the Supreme Court of Pakistan that any pending miscellaneous application, such as one for additional evidence, must be decided before addressing the merits of the case to ensure procedural fairness. Hence to resolve such interim matters before pronouncing a final judgment can result in procedural irregularity, rendering the final decision legally flawed. In the judgment reported as "*<u>Muhammad Azam versus Muhammad Abdullah through LRs</u>*" **(2009 SCMR 326)**, the Supreme Court has observed that … *We have examined the record of learned High Court, according to which appellant had filed application (Civil Miscellaneous Application No.370/C of 1990)*

for production of additional evidence on 23.01.1990. Notice was issued to the respondent and it was observed that this application shall be decided alongwith main case (Civil Revision No.83 of 1990). However, the learned High Court decided the revision petition brought by appellant without taking into consideration documents in question and without disposal of said application for additional evidence. As such we find that case of appellant has been prejudiced. Even otherwise the case of the appellant is that he is co-sharer in the Khewats in question, therefore, it was in the interest of justice that High Court should have decided his application before final adjudication of the case. The Supreme Court in another judgment cited as "*Mst. Imtiaz Begum versus Mst. Sultan Jan and others*" **(2008 SCMR 1259)** has held that … *Accordingly we do not consider it a complete and full adjudication of the disputatious questions of law and facts involved in Civil Revision No.14 of 1996. So, the impugned judgment with regard to Civil Revision No.14 of 1996, delivered by the learned Peshawar High Court, Abbotabad Bench is set aside and the case is remanded to the aforementioned learned High Court, considering Civil Revision No.14 of 1996 to be pending before it, with direction to decide the application Civils Miscellaneous bearing No.22 of 1996 filed by Qamar Zaman as well as the civil revision afresh after grant of opportunity of hearing to the parties to the above noted revision.* It has also been held in the judgment reported as "*Muhammad Umer versus Muhammad Qasim and another*" **(1991 SCMR 1232)** that … *The same point has been urged before us. The learned Civil Judge while dismissing the suit of the petitioner mainly relied upon the order of the Deputy Land Commissioner whereby the land allotted in the name of the petitioner was cancelled. But this order of cancellation was set at naught by then Land Commissioner. As per the record, the petitioner sought to produce the same vide application made under Order XLI, Rule 27 CPC, and we think that once the Appellate Court was seized of the matter, i.e. the application under Order XLI Rule 27 CPC it ought to have adjudicated upon the same before disposing of the appeal.*

II. LAHORE HIGH COURT

10. Whilst deriving guidance formulated by the Supreme Court of Pakistan in aforementioned judgments, this Court on the issue in hand, held in the judgment reported as "*Mst. Ghulam Fatima and others versus Pahar Khan and others*" **(2024 CLC 1538)** that *... in case of pendency of some miscellaneous application, it is incumbent upon the court to first decide the application and then advert to the merits of the case. The primary object is that a lis should be buried in all respects as per canons of justice and by deciding the miscellaneous application in the first instance, allowing parties to retrace the steps fairly and equitably. Allowing a court to decide the application for additional evidence alongwith the appeal would amount to give a premium to decide such application in negative. The joint decision of the miscellaneous application and appeal would not be even possible, if the court ultimately reaches at the conclusion that the application has due force and it is to be accepted. It would thus be in all fairness that the court should first decide the miscellaneous application and then pass final order/judgment qua the lis.* It has been also observed in the judgment of this Court reported as "*Abdul Jabbar Shahid and others versus National Bank of Pakistan and others*" **(PLD 2019 Lahore 76)** that *... It is settled principle of law that non-disposal of the miscellaneous applications while deciding the main case vitiates the final order*. Moreover, in the judgment reported as "*Azra Manzoor Aureshi versus Faysal Bank Limited and 2 others*" (**2005 CLD 1417**) it has been held by this Court that *... It is settled law by now that if any miscellaneous application is filed by the party, it is incumbent upon the learned Court to decide the said application either way, through a specific order and then to decide the main case and failure to decide such an application would vitiate the main judgment*. Further reliance is placed on the judgments reported as "*Khair Deen Versus Rehm Deen and 4 others*" (**1996 CLC 1731**), "*Muhammad Yaqub versus Baqir and 2 others*" **(1993 CLC 1319**), "*Rehmat Ali Khokhar versus Mst. Sardaran Bibi and 15 others*"

(PLD 1986 Lahore 283) and *"Muhammad Hussain versus Bulleh Khan"* **(1980 CLC 608).**

III. SINDH HIGH COURT

11. Significant to mention here that the esteemed judgments mentioned supra have been reiterated by Sindh High Court in case reported "*PAK CARPET INDUSTRIES LIMITED versus GOVERNMENT OF SINDH and 2 others*" (**1993 CLC 334**), wherein it has been observed that *... A perusal of R&P of the Appellate Court shows that application under Order 41 Rule 27, CPC was moved by the plaintiff/appellant on 09.07.1984 and notice for its hearing was ordered to be issued for 02.08.1984 and it was adjourned from time to time for one reason or the other and thereafter, perhaps due to inadvertence, it was forgotten and main appeal itself was heard and decided. This was extremely improper on the part of learned Appellate Court. Before hearing final arguments in a suit or an appeal, it is incumbent upon the Court first ensure that every Misc. Application filed by any of the parties stands disposed of, notwithstanding the fact as to whether the party concerned presses it or not. If it is not pressed, it may be dismissed on that account but a specific order must be passed in that regard.*

IV. OPINION OF THE COURT

12. Upon careful consideration of the matter in hand, it becomes abundantly clear that, according to established legal principles, whenever a miscellaneous application, such as an application under Order XLI, Rule 27 CPC for production of additional evidence, is pending during the course of an appeal, it is imperative for the Appellate Court to first decide the said application before delving into the merits of the appeal. This procedural requirement is not merely a technical formality, but a critical component of ensuring that justice is served fairly and equitably. The failure to resolve such a pending application prior to rendering a final decision on the appeal leads to a procedural irregularity that invalidates the entire appellate process, as it deprives the parties of their right to a fair and impartial hearing. The law unequivocally mandates that all pending miscellaneous applications

must be disposed of before addressing the main case, as the non-disposal of such applications creates an imbalance and potentially prejudices the case of the concerned party. A joint decision, where both the miscellaneous application and the appeal are decided together, without first addressing the application separately, undermines the fairness of the judicial proceedings, as it gives undue weight to the appeal and may result in the improper rejection of the application. Furthermore, deciding both the application and the appeal simultaneously denies the parties an opportunity to properly argue and substantiate their respective positions regarding the additional evidence. This is a fundamental breach of the principles of justice and procedural propriety.

13. Furthermore, this Court has to analyze the allegations of jurisdictional error, such as the jurisdiction that is vested in it by law was not exercised, and/or the court has acted in exercise of its jurisdiction illegally or with material irregularity, or committed some error of procedure in the course of the trial which is material and has affected the ultimate decision. Reliance in this regard is placed on the judgment reported as "*Haji MUSHARRAF MAHMOOD KHAN (deceased) through L.Rs. versus SARDARZADA ZAFAR ABBAS (deceased) through L.Rs. and others*" **(PLD 2024 SC 588)**, wherein it has been held that "*the Revisional Court can even exercise its suo motu jurisdiction to ensure effective superintendence and visitorial powers to make sure, by all means, the strict adherence to the safe administration of justice, and may correct any error unhindered by technicalities."*

14. For the foregoing reasons, this civil revision is **allowed**, the impugned order/judgment and decree dated 09.01.2023, passed by the learned Appellate Court is set aside. As a sequel whereof, the appeal as well as application under Order XLI Rule 27 of CPC shall be deemed to be pending before the Appellate Court. The Appellate Court shall first adjudicate upon the pending application for additional evidence and after a proper and independent determination of the same, proceed to consider and decide the appeal on its own merits, strictly in accordance with law.

15. Parties shall appear before the learned Appellate Court/Additional District Judge, Pasrur, seized with the matter, on 02.12.2024. Needless to observe that it is expected from the Court, seized with the matter, to take all necessary steps for early conclusion of the appeal, which shall preferably be decided within two (02) months from the first appearance of the Parties before the said Court. No order as to cost.

(JAWAD HASSAN)
JUDGE

Approved for reporting.

JUDGE

ZIA.UR.REHMAN