

Form No.HCJD/C-121

**ORDER SHEET**

**IN THE LAHORE HIGH COURT LAHORE**

**JUDICIAL DEPARTMENT**

Case Diary No.9494 of 2023.

Chairman National Highway Authority and another.

Versus

Abdul Hameed etc.

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**OBJECTION CASE.**

20.01.2023. Mr. Azmat Hayat Khan Lodhi, Advocate for the petitioners.

Office has raised objection against maintainability of this petition on the ground that the petitioners should avail the proper remedy against the impugned order.

2. Learned counsel for the petitioners submits that since the Land Acquisition Act, 1894 (the Act, 1894) is a special law, remedy of appeal is to be governed under the said enactment and not the CPC. Adds that since the petitioners are debarred to file appeal they have no remedy except to file the Writ Petition. Relies on The Land Acquisition Collector, Pak-Arab Refinery Limited and others v. Khan (deceased) and others (2019 MLD 968), Punjab Province through Secretary to Government of the Punjab, Housing and Physical Planning Department and 4 others v. Muhammad Ishaque (2005 YLR 148), ICI Pakistan Manufacturers Ltd. v. Salah-ud-Din and 3 others (1988 MLD 980) and Muhammad Fazil Khan and 3 others v. Azad Government of the State of

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Jammu and Kashmir through Chief Secretary and 9 others (2017 YLR Note 400).

3. After hearing learned counsel for the petitioners and going through the documents, annexed with this petition, I have noted that in this petition the petitioners have assailed *vires* of order, dated 24.10.2022, passed by the learned Senior Civil Judge (Civil Division), Kasur (respondent No.2), whereby their application seeking setting aside of *ex-parte* proceedings, dated 27.09.2016 and *ex-parte* decree, dated 09.11.2021, was dismissed. In ordinary course, an order dismissing application filed under Order IX rule 13 CPC is appealable in terms of Order XLIII CPC. As far as proceedings on a Reference, filed under section 18 of the Act, 1894, are concerned, the same are to be governed under CPC in terms of section 53 of the Act, 1894 which for convenience of reference is reproduced herein below: -

*“53. Code of Civil Procedure to apply to proceedings before Court.– Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act.”*

From the above, it is crystal clear that the procedure provided under CPC is applicable to proceedings before the Referee Court until and unless it has specifically been ousted. The High Court of Sindh, in the case of Province of Sindh, Secretary Board of Revenue,

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Government of Sindh through District Officer v. Deputy District Officer (Rev) and 2 others (2015 YLR 209), while dealing with remedy against order dismissing an application for setting aside of *ex-parte* proceedings and decree, passed by a Referee Court, has *inter-alia* held as under: -

*“7. I have heard the learned A.A.G. and the learned counsel for respondents 2 and 3, perused the record, and have also examined the law cited at the bar. I shall first deal with- the preliminary objection that this appeal is barred by limitation. By virtue of section 53 of the Land Acquisition Act, 1894, the provisions of C.P.C. have been made applicable to all proceedings under the said Act before the Court. Section 54 of the said Act provides that subject to the provisions of C.P.C. applicable to appeals from original decrees, an appeal shall only lie in any proceedings under the said Act to the High Court from the award, or any part of the award, of the Court. It is clear from the language of section 54 *ibid* that no appeal shall lie to the High Court from an order of the Court which is not an award or any part thereof. In my view, the provisions of C.P.C. applicable to appeals from original decrees have been made applicable to appeals against the award or any part thereof because of the reason that rights and liabilities of the parties are determined finally and conclusively in awards as are determined in original decrees. In the instant case, admittedly the award, or any part thereof, was not given by the Court and the application was dismissed for non-prosecution without any conclusive determination or adjudication of the rights and liabilities of the parties. **Therefore, the appeal could not be filed under section 54 *ibid* or under section 96, C.P.C.***

*8. In view of the applicability of the provisions of C.P.C. to the proceedings under the Land Acquisition Act, 1894, **I agree with the learned counsel for respondents 2 and 3 that the appeal ought to have been filed by the appellant before this Court under Rule 1(c) of Order XLIII, C.P.C., which specifically provides an appeal***

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**against an order under Order IX, Rule 9, C.P.C. rejecting an application to set aside the dismissal of a Suit.** Since the impugned order of rejecting the application for setting aside the dismissal of application was passed by a Court subordinate to this Court, the relevant provision of limitation for filing an appeal in this case would be Article 153 of the First Schedule of the Limitation Act, 1908. Article 153 *ibid* prescribes limitation of 30 days for filing an appeal under C.P.C. to High Court from an order of a subordinate Court, and the period is to be computed from the date of the order. In view of the said specific provision for a specific situation, residuary Article 181 of the First Schedule of the Limitation Act, 1908, relied upon by the learned A.A.G., shall not apply in the present case as the said Article is attracted only to cases where no limitation is provided elsewhere in the First Schedule of the Limitation Act, 1908.” (emphasis provided).

4. It is astonishing to note that one the one hand learned counsel for the petitioners has argued that the provisions of CPC are not applicable to the Reference filed under section 18 of the Act, 1894 but on the other himself opted to file application under Order IX rule 13 CPC. It is well entrenched by now that when a party opts to file proceedings under any law, further remedy is governed under the same law. Insofar as the case in hand is concerned, when the petitioner himself filed application under Order IX rule 13 CPC for setting aside of *ex-parte* proceedings and decree, further remedy is to be governed under CPC and not the Act, 1894, especially when the appeal provided under the Act, 1894, is inapplicable in the present case.

5. Now coming to the case-law, cited by learned counsel for the petitioners, I am of the view that the same

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is inapplicable to the facts and circumstances of the present case inasmuch as in the case of The Land Acquisition Collector, Pak-Arab Refinery Limited and others (Supra) the question in pith and substance was the jurisdiction of the Civil Court to entertain any matter/application in contravention to the provisions of the Act, 1894 which is not the position in the case in hand rather the question involved in this matter is the remedy available to an aggrieved person against an order dismissing application for setting aside of *ex-parte* proceedings and decree. Likewise, in the case of Muhammad Fazil Khan and 3 others (Supra) the Supreme Court of Azad Jammu and Kashmir has held that since the Referee Court is not subordinate to the District Court, no order passed by the Referee Court is revisable before District Court. I agree with the conclusion arrived at by the Supreme Court of Azad Jammu and Kashmir to the extent that no order of Referee Court can be challenged before the District Court but the said judgment cannot be used to oust the jurisdiction of this Court to entertain an appeal under Order XLIII CPC. So far as the case of Punjab Province through Secretary to Government of the Punjab, Housing and Physical Planning Department and 4 others (Supra) is concerned, suffice it to note that in the said case it has been decided that in the event of inconsistency between

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the provisions of CPC and the Act, 1894, the latter being special law would prevail which is not the position in the case in hand. Taking up the case of ICI Pakistan Manufacturers Ltd. (Supra), I have noted that a learned Division Bench of this Court has held that after announcement of Award the government has no right of appeal which has not even remotest connectivity with the case in hand. Further, in the case of Military Estates Officer, Hazara Circle, Abbottabad and another v. Pir Khan and another (1980 CLC 1467) the said question has been responded in the following manner: -

*“Since the Central Government in the present case was a party before the Reference Court and is interested in the result of the litigation, as the cost of acquisition is to be defrayed by it, we are of the view that even on the basis of the rule laid down by the Supreme Court in the above-cited case, it (Central Government) was entitled to maintain the present appeals. We, therefore, hold that the present appeals preferred by the Central Government are maintainable.”*

6. For what has been discussed above, I have no hesitation to hold that the order impugned in this petition is appealable in terms of Order XLIII CPC, thus, the Office Objection is sustained being well-based.

(Shujaat Ali Khan)  
Judge

APPROVED FOR REPORTING.

Judge