

Stereo. H C J D A-38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.69059 of 2024

Muhammad Ashfaq & others

Versus

Civil Judge, Samundari & others

J U D G M E N T

Date of hearing: 13.11.2024.
Petitioners by: Malik Muhammad Nadeem, Advocate.
Respondents by: Ch. Lehrasib Khan Gondal, Advocate (for respondent No.3).

MUHAMMAD SAJID MEHMOOD SETHI, J.:- This writ petition is directed against the order dated 22.07.2024 & judgment dated 05.09.2024, passed by learned Civil Judge and Additional District Judge, Samundri, respectively, whereby applications for setting aside *ex parte* proceedings dated 22.11.2023, filed by petitioners No.1 to 3 and petitioner No.4, respectively, were concurrently dismissed.

2. Brief facts of the case are that respondent No.3 filed suit for recovery of damages amounting to Rs.20,000,000/- (Rupees Twenty Million only) against the petitioners, which was contested by petitioners No.1 to 3 and petitioner No.4 by filing their respective written statements. Learned Trial Court framed issues. During the course of proceedings, petitioners were proceeded against *ex parte* vide order dated 22.11.2023. Petitioners No.1 to 3 and petitioner No.4 moved their respective applications for setting aside aforesaid *ex parte* proceedings, which was contested by respondent No.3 by way of filing written reply. After hearing respective arguments of learned counsel for the parties, learned Trial Court proceeded to dismiss the aforesaid applications vide order dated 22.07.2024. Feeling aggrieved,

petitioners filed revision petition, which was also dismissed vide judgment dated 05.09.2024. Hence, instant petition.

3. Learned counsel for petitioners submits that petitioners' applications for setting aside *ex parte* proceedings have been concurrently dismissed by learned Courts below with the observation that said application is barred by time as the same was filed after 30-days. He adds that limitation for filing such application is 03-years, therefore, impugned decisions, being contrary to the applicable law, are unsustainable. In support, he has relied upon Messrs Rehman Weaving Factory (Regd.), Bahawalnagar v. Industrial Development Bank of Pakistan (PLD 1981 Supreme Court 21) and Muhammad Ramzan v. Malik Rehmat Ullah and others (2014 MLD 451).

4. On the other hand, learned counsel for respondent No.3 defends the impugned decisions.

5. Arguments heard. Available record perused.

6. Record shows that petitioners initially contested the suit filed by respondent No.3 by filing their written statements, whereafter issues were framed by learned Trial Court. However, during the course of proceedings, petitioners were proceeded against *ex parte* vide order dated 22.11.2023. It is the stance of petitioners that since petitioners No.1 to 3 are barely educated who are not familiar with the legal intricacies and petitioner No.4 is living abroad, represented through his counsel, therefore, upon assurances of their counsel to keep them informed about the proceedings of the suit, petitioners remained unaware of the developments and were ultimately proceeded against *ex parte* as a result of collusiveness of their counsel. Whereas, the applications for setting aside *ex parte* proceedings were dismissed on the ground of limitation as *ex parte* proceedings were initiated vide order dated 22.11.2023 and applications for setting aside *ex parte* proceedings were filed on 16.05.2024 and 10.06.2024.

7. Needless to say that Article 163 of the Limitation Act, 1908 provides limitation of 30-days for a plaintiff to seek setting aside of order of dismissal of suit for default, whereas Article 164 prescribes

limitation of 30-days for a defendant to seek setting aside of *ex parte* decree. None of these Articles or any other specific Article cater the situation qua limitation for filing application for setting aside *ex parte* proceedings. In these circumstances, it would be governed by the residuary Article 181 of the Act *ibid*, which provides a limitation period of 03-years from the date the right to sue accrues. It is also well settled that even if the defendants are proceeded *ex parte*, they may join the proceedings at any subsequent stage and file an appropriate application for setting aside *ex parte* order, provided they show good cause. A person nevertheless declared *ex parte*, remains as party to the proceedings and may even cross-examine the witnesses. If good cause is shown to the satisfaction of the Court justifying their previous absenteeism, the *ex parte* proceedings may be set aside by the Court and the defendant may then be restored to the position he held before being proceeded against *ex parte*. This rule invests the Court with the wide-ranging potential discretion to allow the application if the defendant who was declared *ex parte* assigns good cause for previous absence. Even otherwise, in the absence of any clear provisions in the Code of Civil Procedure prohibiting the appearance and participating in the proceedings by the defendant, proceeded *ex parte*, there can be no legal bar to allow him to defend his rights. It is the right of every defendant and also a principle of natural justice, to be given a chance of hearing before any order is passed against his interest. Reliance is placed upon *Police Department through Deputy Inspector-General of Police and another v. Javid Israr and 7 others* (1992 SCMR 1009) and *Muhammad Yousuf Bhindi and others v. Messrs A.G.E. & Sons (Pvt.) Ltd. and others* (PLD 2024 Supreme Court 864).

8. Admittedly, the suit is still pending before learned Trial Court and valuable rights of the petitioners are said to be involved in the subject litigation, therefore, in such a situation, it would be unjustified to dislodge them from the active contest on the basis of technicalities. Reliance is placed upon the case of *Messrs Rehman*

Weaving Factory supra and Rana Karamat v. Farhan Haider and 6 others (2024 CLC 563).

9. Resultantly, instant petition is allowed and impugned order dated 22.07.2024 & judgment dated 05.09.2024, passed by learned Civil Judge and Additional District Judge, Samundri, respectively, are declared to be illegal and without lawful authority. Consequently, the applications for setting aside *ex parte* proceedings, filed by petitioners, are allowed and order for initiating *ex parte* proceedings dated 22.11.2023, is set aside.

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

A.H.S.