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Judgment Sheet

LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

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CIVIL REVISION NO.33-D of 2022

KHAWAJA JAVED MEHMOOD

Versus

PUNJAB SMALL INDUSTRIES CORPORATION Through Regional Director Rawalpindi and 2 others

JUDGMENT

Date of hearing:	21.03.2024
Petitioner by:	Mr. Muhammad Taimur Malik, Advocate.
Respondents No.1 & 2 by:	Mr. Waqar ul Haq Sheikh, Advocate.

MIRZA VIQAS RAUF, J. The petitioner herein after spending considerable time abroad returned to his home land and decided to establish a garments factory. For the said purpose the petitioner applied to the Punjab Small Industries Corporation, Jhelum for allotment of a commercial plot measuring 02 Kanal. It is the claim of the petitioner that after the allotment, he deposited the amount due in furtherance whereof, possession was delivered to him but the respondent-Corporation confronted him with the demand at the rate of Rs.1,00,000/- per Kanal instead of Rs.52,000/- per Kanal as agreed and settled originally. On receipt of notices from the respondent-Corporation, the petitioner instituted a suit for declaration, permanent and mandatory injunction, which was resisted by the respondent-Corporation, while submitting written statement wherein it is asserted that the petitioner obtained the suit plot at the

rate of Rs.1,00,000/- per Kanal and to this effect he also submitted an undertaking dated 06th October, 1994 accepting the price alongwith interest of 15%. From the divergent pleadings of the parties, learned Civil Judge Class-I, Jhelum framed multiple issues. After framing of issues, evidence of both the sides was recorded and ultimately suit was dismissed *vide* judgment and decree dated 04th December, 2010. Feeling dissatisfied the petitioner though preferred an appeal before the learned Additional District Judge, Sohawa District Jhelum but remained unsuccessful as it was also dismissed through judgment and decree dated 28th October, 2021, hence this petition under Section 115 of the Code of Civil Procedure (V of 1908) (hereinafter referred to as "C.P.C.").

2. Learned counsel for the petitioner submitted that the petitioner is the valid allottee of the suit plot. He added that at the time of allotment the rate of the suit plot was determined as Rs.52,000/- per Kanal and the petitioner paid the whole consideration. It is contended with vehemence by learned counsel for the petitioner that later on the respondent-Corporation demanded sale price at the rate of Rs.1,00,000/- per Kanal, which demand was illegal and unlawful. Learned counsel emphasized that the petitioner has been non-suited on extraneous grounds and the impugned judgments and decrees are though concurrent but are not tenable.

3. Conversely, learned counsel for respondent-Corporation submitted that the petitioner was obliged to pay the sale price at the rate of Rs.1,00,000/- per Kanal but despite repeated demands he failed to deposit the same. Learned counsel contended that the petitioner has no vested right to seek enforcement of contract through a suit for declaration and as such he was rightly non-suited by the courts below. Learned counsel emphasized that there are concurrent findings of the facts of the courts below and this revision petition is not maintainable.

4. Heard. Record perused.

5. The petitioner after his return from abroad applied to the respondent-Corporation for a commercial plot to establish a garments factory. It is the claim of the petitioner that suit plot was allotted to him at the rate of Rs.52,000/- per Kanal as sale price, which he deposited on 06th October, 1994 and in pursuance thereof he was also handed over possession of the suit plot whereafter he raised construction. The grievance of the petitioner is that after afflux of sometime the respondent-Corporation issued him letter asking to pay the sale price at the rate of Rs.1,00,000/- per Kanal, which is totally unwarranted. While resisting the suit, the respondent-Corporation pleaded that the sale price of the suit plot was Rs.1,00,000/- per Kanal and the petitioner though established the garments factory upon the suit plot but he failed to pay the sale price at the actual rate. It is also pleaded that the petitioner to this effect submitted an undertaking as well. From the analysis of the respective pleadings of the parties it is an admitted position that suit plot was allotted to the petitioner and after payment of sale price, he was handed over the possession whereafter he established a garments factory.

6. The moot point which thus emerges from the pleadings is restricted to the actual sale price of the suit plot. As per claim of the petitioner, suit plot was allotted to him at the rate of Rs.52,000/- per Kanal whereas respondent-Corporation is of the view that it was Rs.1,00,000/- per Kanal. In order to prove his claim, the petitioner examined Muhammad Zaheer as PW1 whereas he himself appeared as PW2. The petitioner also produced documentary evidence in addition to the oral account. On the contrary, the respondent-Corporation produced Muhammad Tahir, Deputy Director Punjab Small Industries Corporation, Jhelum as DW1 whereas documentary evidence was also brought on record to rebut the claim of the petitioner.

7. It appears from the record that initially on dismissal of his suit, the petitioner preferred an appeal before the learned Additional District Judge, Jhelum Camp at Sohawa, which was dismissed by

way of judgment and decree dated 02nd July, 2015. Feeling dissatisfied the petitioner filed Civil Revision No.663-D of 2015 before this Court, which was allowed *vide* judgment dated 22nd April, 2021 with the following observations :-

> ***"6.*** After having an overview of the well-settled principles noted hereinabove, I am of the considered opinion that the impugned judgment and decree dated 2nd July, 2015 passed by the learned Additional District Judge, Jhelum (Camp at Sohawa) cannot sustain, so without touching other merits of the case lest it prejudice to the case of either of the side, with consent instant petition is **accepted,** as a result thereof, impugned judgment and decree is **set aside**. Resultantly appeal alongwith application for additional evidence filed by the petitioner shall be deemed to be pending before the learned Additional District Judge, Sohawa-I, who shall decide the same afresh, while taking into account observations made hereinabove. Needless to observe that the court, seized with the matter, shall first attend the application for additional evidence and after deciding the same by way of an independent order with due application of judicious mind then attend the merits of the appeal and decide the same accordingly thereafter.
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> ***7.*** Keeping in view the pendency of this litigation for a considerable period i.e. since 2005, it is expected that the appeal shall be decided within two months from the date of first appearance of the parties before the Court, seized with the matter. Office to transmit copy of this judgment to the Court concerned for compliance. Parties to appear before the learned Additional District Judge-I, Sohawa on ***19.05.2021."***

In pursuance to the above said judgment of this Court, the application for additional evidence was allowed with consent of the respondent-Corporation in furtherance whereof document (Exhibit-P12) was made part of record.

8. As already observed that the only resistance on the part of respondent-Corporation to the suit is that the actual sale price is Rs.1,00,000/- per Kanal and not Rs.52,000/- per Kanal as asserted by the petitioner, so in this eventuality they were obliged to lead tangible evidence and to discharge the onus. Muhammad Tahir, Deputy Director Punjab Small Industries Corporation, appeared on behalf of respondent-Corporation and his whole statement revolves around the undertaking submitted by the petitioner. Before adverting to the validity of said undertaking it would be advantageous to highlight some of the extract from the statement of DW1, which in my estimation would be sufficient to resolve the matter in issue :-

"۔۔۔۔مورخہ 26-10-94 کو ایک لاکھ کنال ریٹ فکس ہوا تھا۔ یہ ریٹ ہمارے بورڈ آف ڈائریکٹر نے منظور کیا تھا۔جس میٹنگ میں ریٹ فکس ہوا تھا اسکے رکن اعجاز صاحب بھی تھے۔ یہ درست ہے کہ میٹنگ کے منٹس 04-12-94 کو ہمیں موصول ہوئے تھے۔ 26-10-94 سے قبل ریٹ باون ہزار روپے فی کنال تھا۔undertaking سائل کی ہے اس سے ہمارا کوئی تعلق نہ ہے۔ یہ درست ہے کہ undertaking یہ الفاظ one lac only مختلف ٹائپ رائٹر کے جو دوسری تحریر سے مختلف ہے۔ یہ درست ہے کہ پیرا نمبر 1 کی آخری لائن میں بھی دو الفاظ پہلی ٹائپ رائٹر کے ہیں باقی علیحدہ ٹائپ رائٹر کے ہیں ۔ازخود کہا کہ یہ undertaking سائل نے خود ہی لکھ کر دی تھی۔ یہ درست ہے کہ ہم نے جواب دعویٰ 06-10-94 والی undertaking کا حوالہ دیا ہے۔۔۔۔"

It is thus apparent from the statement of said witness that Rs.1,00,000/- per Kanal as sale price of suit plot was demanded by the respondent-Corporation on the basis of decision taken in the meeting dated 26th October, 1994, which was made part of record by the respondent-Corporation through C.M. No.109-C of 2024. In terms whereof following decision was taken :-

> "03. Each and every issue was discussed in detail and the following decisions were taken :-
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> i) PRICE OF THE PLOTS: It was explained by the Joint Director (F&B) that the entire amount for the establishment of Small Industries Estate, Jhelum was provided by the Government as interest-bearing loan and, therefore, a huge amount of Rs.203.10 Lacs was payable to the Government, which would increase after the reconciliation of accounts with Finance Department, Government of the Punjab. Keeping in view the financial liability, it was decided that the price of plot per Kanal in Small Industries Estate, Jhelum should be fixed at a flat rate of Rs.1,00 Lac subject to review in the 1st Week of July, 1995. The revised price would be applicable with immediate effect and all previous allotments shall be governed by the Pricing Policy already intimated *vide* letter No.PSIC/C&D/AD-I/9160 dated 10.12.1987. It was also decided to recover full cost of the plots at the time of allotment under the new Pricing Policy. Both the Regional Director and the Deputy Director (Estate), Jhelum were of the view that it was a reasonable price and, therefore, they would not face any difficulty in disposing off all the remaining plots at revised rates. Regional Director and Deputy Director (Estate) will regularly inform to Head Office of the progress made towards the selling of vacant plots at the new rates."
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> (Underlining supplied for emphasis)

From the bare perusal of the extract of the policy reproduced hereinabove it is manifestly clear that price of the plot at the rate of Rs.1,00,000/- was made applidable from the date of decision whereas all the previous allotments were saved and decided to be governed by the previous policy. As per previous policy, the price of plot in the Punjab Small Industries, Jhelum was Rs.52,000/- per Kanal which fact is even not refuted by the learned counsel for the respondent-Corporation.

9. So far claim of respondent-Corporation is concerned, that is rested upon application for allotment (Exhibit-D1) and undertaking submitted by the petitioner it is observed that both these documents were never confronted to the petitioner and the same were made part of record through the statement of counsel. Article 78 of the Qanun-e-Shahadat Order, 1984, which is akin to Section 67 of the Evidence Act, 1872 lays down the mode of proof of execution of document. Any document which is brought on the record without adhering the mandatory provisions would not be admissible.

10. In the case of *Mst. AKHTAR SULTANA versus Major Retd. MUZAFFAR KHAN MALIK through his legal heirs and others* **(PLD 2021 Supreme Court 715)** the Supreme Court of Pakistan outlined the true import of the relevant provisions of the Qanun-e-Shahadat Order, 1984 dealing with the relevancy and admissibility of the documentary evidence. The relevant extract from the same is reproduced below : -

> **"(i) Relevant and admissible evidence**
> 10. The Qanun-e-Shahadat, 1984 ("Qanun-e-Shahadat") governs the law of evidence in our country. The expression "relevancy" and "admissibility" have their own distinct legal implications under the Qanun-e-Shahadat as, more often than not, facts which are relevant may not be admissible. On the one hand, a fact is "relevant" if it is logically probative or disprobative of the fact-in-issue, which requires proof. On the other hand, a fact is "admissible" if it is relevant and not excluded by any exclusionary provision, express or implied. What is to be understood is that unlike "relevance", which is factual and determined solely by reference to the logical relationship between the fact claimed to be relevant and the fact-in-issue, "admissibility" is a matter of law. Thus, a "relevant" fact would be "admissible" unless it is excluded from being admitted, or is required to be proved in a particular mode(s) before it can be admitted as evidence, by the

provisions of the Qanun-e-Shahadat. As far as the latter is concerned, and that too relating to documents, admissibility is of two types: (i) admissible subject to proof, and (ii) admissible per se, that is, when the document is admitted in evidence without requiring proof.

(ii) Mode of proof

11. Mode of proof is the procedure by which the "relevant" and "admissible" facts have to be proved, the manner whereof has been prescribed in Articles 70-89 of the Qanun-e-Shahadat. In other words, a "relevant" and "admissible" fact is admitted as a piece of evidence, only when the same has been proved by the party asserting the same. In this regard, the foundational principle governing proof of contents of documents is that the same are to be proved by producing "primary evidence" or "secondary evidence". The latter is only permissible in certain prescribed circumstances, which have been expressly provided in the Qanun-e-Shahadat.

12. What is important to note is that, as a general principle, an objection as to inadmissibility of a document can be raised at any stage of the case, even if it had not been taken when the document was tendered in evidence. However, the objection as to the mode of proving contents of a document or its execution is to be taken, when a particular mode is adopted by the party at the evidence-recording stage during trial. The latter kind of objection cannot be allowed to be raised, for the first time, at any subsequent stage. This principle is based on the rule of fair play. As if the objection regarding the mode of proof adopted has been taken at the appropriate stage, it would have enabled the party tendering the evidence to cure the defect and resort to other mode of proof. The omission to object at the appropriate stage becomes fatal because, by his failure, the party entitled to object allows the party tendering the evidence to act on assumption that he has no objection about the mode of proof adopted.

13. It is also important to note that the objection as to "mode of proof" should not be confused with the objection of "absence of proof". Absence of proof goes to the very root of admissibility of the document as a piece of evidence; therefore, this objection can be raised at any stage, as the first proviso to Article 161 of the Qanun-e-Shahadat commands that "the judgment must be based upon facts declared by this Order to be relevant, and duly proved". In other words, when the Qanun-e-Shahadat provides several modes of proving a relevant fact and a party adopts a particular mode that is permissible only in certain circumstances, the failure to take objection when that mode is adopted, estops the opposing party to raise, at a subsequent stage, the objection to the mode of proof adopted. However, when the Qanun-e-Shahadat provides only one mode of proving a relevant fact and that mode is not adopted, or when it provides several modes of proving a relevant fact and none of them is adopted, such a case falls within the purview of "absence of proof", and not "mode of proof"; therefore, the objection thereto can be taken at any stage, even if it has not earlier been taken.

(iii) Evidentiary value

14. Once a fact crosses the threshold of "relevancy", "admissibility" and "proof", as mandated under the provisions of the Qanun-e-Shahadat, would it be said to be admitted, for

> its evidentiary value to be adjudged by the trial court. The evidentiary value or in other words, weight of evidence, is actually a qualitative assessment made by the trial judge of the probative value of the proved fact. Unlike "admissibility", the evidentiary value of a piece of evidence cannot be determined by fixed rules, since it depends mainly on common sense, logic and experience and is determined by the trial judge, keeping in view the peculiarities of each case."

To the above effect guidance can also be sought from *MANZOOR HUSSAIN (deceased) through L.Rs. versus MISRI KHAN* **(PLD 2020 Supreme Court 749)** wherein the Supreme Court of Pakistan held as under :-

> **"**4. Before parting with this case we would like to comment on a related matter. Copies of the acknowledgement receipt (exhibit P4), aks shajarah kishtwar (exhibit P2), registered post receipt (exhibit P3), mutation (exhibit P5) and jamabandi for the year 2000-2001 (exhibit P6) were produced and exhibited by the pre-emptor's counsel, but without him testifying. We have noted that copies of documents, having no concern with counsel, are often tendered in evidence through a simple statement of counsel but without administering an oath to him and without him testifying, especially in the province of Punjab. Ordinarily, documents are produced through a witness who testifies on oath and who may be cross-examined by the other side. However, there are exceptions with regard to facts which need not be proved; these are those which the Court will take judicial notice of under Article 111 of the Qanun-e-Shahadat Order, 1984 and are mentioned in Article 112, and facts which are admitted (Article 113, Qanun-e-Shahadat Order, 1984).
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> 5. The acknowledgement receipt was stated to have been signed when the envelope said to contain the Talb-i-Ishhad notice was purportedly received by the respondent. However, the respondent had not admitted receipt of the said notice, therefore, the acknowledgement receipt (exhibit P4) could not be stated to be an admitted document and did not constitute an admitted fact. Therefore, delivery to and/or receipt by the respondent of the notice had to be established. We also note that in this case the said counsel had furnished copies of all five documents (exhibits P2 to P6), which were produced by him. The Qanun-e-Shahadat Order, 1984 explicitly sets out the documents which must be produced in original, which in the present case would be the registered post receipt (exhibit P3) and acknowledgment receipt (exhibit P4), and photo copies, that is secondary evidence, could only be produced as permitted; and as regards extracts of official records, that is, the aks shajarah kishtwar (exhibit P2), mutation (exhibit P5) and jamabandi (exhibit P6), certified copies thereof had to be tendered in evidence. In not observing the rules of evidence unnecessary complications for litigants are created, which may result in avoidable adverse orders or in the case being remanded on such score, which would be avoided by abiding by the Qanun-e-Shahadat Order, 1984.**"**

The above principles were even reiterated by this Court in the case of *NATIONAL COMMAND AUTHORITY through D.G. SPD, Rawalpindi and*

others versus ZAHOOR AZAM and others **(2024 CLC 1).** After having an overview of the principles noted hereinabove it can be held without any hint of doubt that the document (Exhibit-D1) and undertaking submitted by the petitioner would be nothing except stray papers in the eye of law.

11. It would not be out of context to mention here that with regard to the undertaking it is specific stance of the petitioner that it was obtained by the respondent-Corporation later on and the column of price was kept blank on the asking of concerned officer of Corporation at the time of its submission, which was later on filled up by respondents themselves. This stance of the petitioner finds due support from the statement of Muhammad Tahir (DW1) as reproduced hereinabove. It is an oft repeated principle of law that disputed documents cannot be tendered in evidence through the statement of counsel of the party. The reason for such restriction is that through such procedure the opposing party becomes deprived to challenge the authenticity of such document by way of cross-examination. Guidance to this effect can be sought from *Mst. AKHTAR SULTANA versus Major Retd. MUZAFFAR KHAN MALIK through his legal heirs and others* **(PLD 2021 Supreme Court 715)** and *Khan MUHAMMAD YUSUF KHAN KHATTAK versus S. M. AYUB AND 2 OTHERS* **(PLD 1973 Supreme Court 160).**

12. It clearly emerges from the record that at the time of allotment of the suit plot to the petitioner, the new policy which has been pressed into service by the respondent-Corporation to claim sale price of Rs.1,00,000/- per Kanal, was not in operation at all. In such situation even an undertaking from the petitioner, which though is seriously refuted by him would not be sufficient to hold that he was liable to pay Rs.1,00,000/- per Kanal as sale price of the suit plot.

13. There are though concurrent findings of facts recorded by both the courts blow but such findings are clearly the outcome of gross misreading and non-reading of evidence. The scope of revisional jurisdiction is hedged in Section 115 of “C.P.C.” and though ordinarily concurrent findings of facts are not disturbed but such

findings are neither sacrosanct nor it is an inflexible rule that despite observing material flaws, the revisional court will abdicate to exercise its jurisdiction. The judgments passed by the courts below are not based on proper appraisal of evidence and the learned Civil Judge, while dismissing the suit of the petitioner has grossly misread the evidence as already noted hereinabove. The appellate court in the circumstances, while upholding the judgment and decree of trial court thus committed a material irregularity. This Court under Section 115 of "C.P.C." is thus obliged and fully competent to correct such error in exercise of its revisional jurisdiction. Needless to observe that when once it is established on the record that concurrent findings are fraught with legal infirmities, it becomes the bounden duty of court exercising revisional powers to curb and stifle such illegalities and material irregularities. Reference in this respect, if needed, can be made to *Malik MUHAMMAD KHAQAN versus TRUSTEES OF THE PORT OF KARACHI (KPT) and another* **(2008 SCMR 428)** and *IMAM DIN and 4 others versus BASHIR AHMED and 10 others* **(PLD 2005 Supreme Court 418)**.

14. For the foregoing reasons, the instant petition is **allowed,** impugned judgments and decrees are set aside, as a result thereof, suit instituted by the petitioner shall stand **decreed** with no order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

APPROVED FOR REPORTING

JUDGE

Shahbaz Ali*