Form No.HC.JD/C-121

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No. 36424 of 2023

Falak Sher and 2 others **Versus** Abdul Aziz (deceased) through L.Rs etc.

Sr. No. of Order/ Proceeding	Date of Order/ Proceeding	Order with Signature of Judge, and that of parties or counsel, where necessary
	31.05.2023	Mian Shahid Iqbal, Advocate for the petitioners.

Through this revision-petition, filed under section 115 of the Civil Procedure Code, 1908 (the *'**Code**'*), the following order passed by the learned Additional District Judge, Sillanwali, District Sargodha (the '***appellate court***') on 18.05.2023, has been assailed:-

> "*At the very outset learned counsel for appellants seeks an adjournment for ten/eleven days by saying that he is heart patient and has to proceed to Lahore for his medical treatment. He further submitted that on next date in case of his non-appearance, he will submit written arguments. The appeal is pending for the last more than three years and falls within the direction cases of three years old, however, for preserving ends of justice, request of learned counsel for appellants is accepted and adjournment is granted. Now to come up for final arguments coupled with arguments on application for permission to produce additional evidence for 29.05.2023*."

2. Mian Shahid Iqbal, learned counsel for the revision-petitioners, has submitted that the *appellate court* has incorrectly fixed the application dated 18.03.2023 filed under Order XLI Rule 27 of the *Code* (the '***application***') as well as the main appeal for arguments on the same day. He has submitted that there is an apprehension that while proceeding to decide the main appeal, the *application* shall be ignored and / or the guidelines given in case titled "*Muhammad Umer versus*

Muhammad Qasim and another" (**1991 SCMR 1232**) shall be overlooked. Learned counsel for the revision-petitioners has added that in view of law laid down by the Honourable Supreme Court of Pakistan in case reported as "*Nestle Milkpak Limited versus Classic Needs Pakistan (Pvt.) Ltd. and 3 others*" (**2006 SCMR 21**) and by this Court in case reported as "*Messrs Sheikh Goods Transport Company and others versus National Fertilizer Marketing Ltd.*" (**2022 MLD 121**) the above reproduced order is a 'case decided' as contemplated by section 115 of the *Code*.

3. Arguments heard. Documents available on the file have been perused.

4. Section 115 of the *Code* reads as follows:-

> ***Revision***.
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> *(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appear:-*
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> *(a) to have exercised a jurisdiction not vested in it by law, or*
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> *(b) to have failed to exercise a jurisdiction so vested, or*
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> *(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit*
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> *Provided that, where a person makes an application under this sub-section, he shall, in support of such application, furnish copies of the pleadings, documents and order of the subordinate Court and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court,*
>
> *Provided that such application shall be made within 90 days of the decision of the Subordinate Court which shall provide a copy of such decision within 3-days thereof, and the High*

> *Court shall dispose of such application within six months.*
>
> *(2) XXX*
>
> *(3) XXX*
>
> *(4) XXX"*

(*Underlining is added*)

Reading of above reflects that the revisional jurisdiction can be exercised when defects contemplated by the above provision are arising out of *any case which has been decided*. In the case titled "*Messrs National Security Insurance Company Limited and others versus Messrs Hoechst Pakistan Limited and others*" (**1992 SCMR 718**) the Honourable Supreme Court of Pakistan has already decided that the term *any case which has been decided* or 'case decided' can be construed as decision in respect of any state of facts after judicially considering the same, though it is not required that this decision has disposed of the whole matter in the cause pending. In the case reported as "*Mian Muhammad Luqman and 5 others versus Farida Khanam and another*" (**1994 SCMR 1991**) the Supreme Court of Pakistan allowed the appeal against an order of this Court, when the revision-petition was maintained by this Court against an interlocutory order of the *fora* below, before final determination of an application for summoning expert. The following observations in aforesaid case are highly relevant:-

> "*The petitioners/plaintiffs' side during the pendency of their suit for specific performance of contract applied for the summoning of a handwriting expert. This application, it has been assumed, was allowed by the order impugned before the High Court in its revisional jurisdiction.* ***The nature of this order is such that prima facie it did not constitute "a case decided". It was doubtful whether the application was at all allowed because the learned trial Judge had also observed that in the interest of justice the***

> ***disputed writing and signatures be retained on the file with a view to comparison" either with a naked eye if the Court so required or to send the same for expert's examination." Otherwise too it is doubtful whether in case an expert would have been summoned as prayed from the petitioner's side the order of summoning of expert would have constituted "a case decided***"."
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> *(Emphasis supplied)*

5. In case titled "*Umar Dad Khan and another versus Tila Muhammad Khan and 14 others*" (**PLD 1970 Supreme Court 288**) the scope of revision against interlocutory order was examined and it has been limited to the decisions that relate to some matter in controversy affecting the rights of the parties in view of the express and implied conditions necessary for the exercise of the revisional jurisdiction. It will be beneficial to reproduce the following extract from the said judgment:-

> *"Firstly it had to be determined whether the order dated the 24th June 1966, was a 'case decided' within section 115, C.P.C. The question as to when does an order passed during the trial of a suit constitute a 'case decided' came up for examination before a Full Bench of seven Judges of the High Court of judicature at Lahore in Gurdevi v. Muhammad Bakhsh (1). Delivering the leading judgment Bhide, J. remarked:-*
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> > *"I am inclined to think that the true test for deciding whether a particular interlocutory order should or should not be looked upon as a 'case' for the purpose of section 115, C.P.C., is to be deduced not from the meaning of the word 'case', but from the proper scope and limits of the revisional jurisdiction conferred upon the High Court by that section. From the standpoint of language, pure and simple, there seems to be no good reason why one branch of a suit should be held to be a 'case' but not another and the word may include any interlocutory order.* ***This does not, of course, mean that purely formal orders such as those relating to an adjournment or the summoning of a witness etc., could be looked upon as***

> ***'cases'.*** *But when a decision relates to some matter in controversy affecting the rights of the parties, I do not see why it should not be looked upon as a 'case'.* ***This wide interpretation of the word 'case' is not, I think, likely to lead to inconvenience in practice as the field of interlocutory orders subject to revision will be extremely narrow in view of the express and implied conditions necessary for the exercise of the revisional jurisdiction. Theoretically the extraordinary jurisdiction is unlimited, but in practice it is held to be subject to important and well-recognized limits****."*
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> *This is the correct statement of law and we are in complete accord with it. The order dated the 24th June 1966, refusing to call for a further report from the Examiner of Questioned Documents was in this view not a 'case decided' within the purview of section 115, C.P.C. to attract the revisional jurisdiction of the High Court. Secondly, orders from which no appeal is provided in Order, XLIII, rule 1, C.P.C., are intended by the Legislature to be final and not open to further interference by the High Court –See Venkatagiri v. H. R. E. Board, Madras (1).*"
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> *(Emphasis supplied)*

6. Examination of the relevant provision and the case law on the subject reveals that High Court should not too readily interfere with the interlocutory orders of the subordinate Court, unless express or implied conditions of clause 'a', 'b' and 'c' of section 115(1) of the *Code* are involved and only those interlocutory orders do attract revisional jurisdiction that deals with some question in controversy before the Court or it has effect on rights of the parties to the *lis*. Baseless apprehensions or assumptions as to wrong exercise of jurisdiction or orders of adjournment or orders fixing the case for arguments, certainly do not fall within the scope of 'case decided' to maintain revision-petition under section 115 of the *Code*. Mian Shahid Iqbal- learned

counsel relied upon "*Nestle Milkpak Limited"* case ***(supra)***, however, the decision of the case, as matter of fact goes against the interest of the present revision-petitioners. The Honourble Supreme Court of Pakistan in the said case has observed that in order to avail remedy under section 115 of the *Code* the order assailed should qualify the test of 'case decided' and normally a revision petition against the interim order is not maintainable. It has been observed that the provision is attracted only when the interim order is passed after considering the facts and then it is found perverse or suffers from jurisdictional defect. The reliance of the learned counsel on "*Messrs Sheikh Goods Transport Company and others"* case ***(supra)*** is equally misplaced. The order assailed in the said revision-petition was a final decision of refusal to permit evidence.

7. Even otherwise, the reliance of Mian Shahid Iqbal-learned ASC on "*Muhammad Umer" case (**supra**)*, to justify that the apprehension of wrong exercise of jurisdiction by the learned *appellate court*, is not acceptable in view of the following observations of the Supreme Court in the case titled "*Sultan Ali alias Sultan through L.Rs and others versus Rasheed Ahmad and 45 others*"(**2005 SCMR 1444**):-

> "*The High Court has not decided the appeal on merits and has accepted it only on the ground that the First Appellate Court acted illegally in deciding the respondents' application for the permission to produce additional evidence under Order XLI, rule, 27, C.P.C. along with the main appeal. It has been held that this procedure adopted by the First Appellate Court was not sustainable keeping in view the law as declared by this Court in the judgment reported as Muhammad Umar v. Muhammad Qasim (supra). We are afraid that the view expressed by the learned Judge in Chambers of the Lahore High Court is incorrect. No such law has been*

> *declared by this Court that in every case the Court has to decide the application for permission to adduce additional evidence prior to the decision of the main appeal through separate orders and cannot give a composite judgment. In Muhammad 'Umar's case (supra) the Appellate Court had dismissed the appeal without deciding the application under Order XLI, rule 27, C.P.C. and in this background the case was remanded by holding that the application under Order XLI, rule 27, C.P.C. ought to have been adjudicated upon before disposing of the appeal and the words "before disposing of the appeal" employed by this Court in the said judgment did not and do not mean that the same cannot be done by the Court seized of the matter, in the same judgment. In the case in hand the First Appellate Court in paras.5 of its judgment, had given reasons in detail for dismissing the application for producing the additional evidence and thereafter proceeded to dismiss the appeal on merits. The procedure adopted by the First Appellate Court did not suffer from any illegality and was in accordance with the procedural law and the law as settled by the superior Courts of this Country*."
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> (*Underlining is added*)

8. For what has been discussed above, I am of the firm opinion that the order assailed before this Court is not a 'case decided'. Resultantly, the instant civil-revision is ***dismissed in limine*** being not maintainable. No order as to costs.

(Sultan Tanvir Ahmad)
Judge

Approved for reporting

Judge

Rana Zahid Bashir