

Before Gul Hassan Tareen, J

Mst. FARZANA (widow) and another---Petitioners

Versus

ABID KHAN and 2 others---Respondents

Civil Revision Petition No. 30 of 2024, decided on 19th August, 2024.

Civil Procedure Code (V of 1908)---

----Ss. 9, 115 & O. VII, Rr.10(2), 11(d)---Return of plaint owing to territorial jurisdiction of first court---Presenting the returned plaint before the court having territorial jurisdiction instead of filing a fresh suit---Appearance and participation of the petitioners in the returned suit without raising any objection---Doctrine of estoppel---Waiver by way of acknowledging the proceedings of Trial Court from the point at which the plaint was returned---Effect---Contention of the petitioners was that on the return of plaint respondent should have instituted a fresh suit instead of presenting returned plaint before the court of competent jurisdiction and the proceedings of the Trial Court should have started from the point as if the suit had been instituted for the first time---Validity---Return of plaint means the return of the entire record of the suit to the plaintiff, who may present the plaint (along with entire proceedings) to the court having territorial as well as pecuniary jurisdiction, therefore, on return of plaint, plaintiff is not authorized by the C.P.C. to bring a fresh plaint and on presentation of the same plaint, the court shall proceed with the suit from the point at which the plaint was returned---In the instant case on presentation of plaint, petitioners had appeared before Trial Court and started participating in the proceedings without raising any objection---Trial Court commenced examining the evidence of respondent and petitioners had cross-examined respondent's witness and had not raised any objection at the earliest possible opportunity that suit should not be tried from the point at which it was returned, and they had not claimed that they would submit a fresh written statement---Petitioners had participated in the proceedings from the point at which the Trial Court commenced the proceedings, therefore, they by their conduct had waived the objections and acknowledged the proceedings of the Trial Court from the point at which it was when the plaint was returned---Petitioners failed to demonstrate, if any prejudice had been caused to them by the proceedings held by the Court not having the territorial jurisdiction and by the proceedings held by the Trial Court from the point at which the plaint was presented, thus, application made by petitioners under O. VII, R. 11, C.P.C., was barred by doctrine of waiver---Where a party participates in the proceedings before a Court whose authority to adjudicate upon does not suffer from inherent defect of jurisdiction, such party cannot afterwards raise objection on the proceedings conducted by such Court, therefore, Appellate Court had rightly set-aside the suit's rejection order passed by the Trial Court, which did not suffer from any error of law and of jurisdiction which may attract the provision of S.115, C.P.C.---Civil Revision was dismissed accordingly.

Pakistan Telecommunication Ltd. v. Faizan Bibi PLD 2013 Sindh 80; Saleem Mehtab v. Refhan Best Food Ltd. 2010 MLD 1015 and Zubaida Begum v. Muhammad Saeed 1991 MLD 1312 ref.

Abdul Hameed Khan v. Nasrullah PLD 2021 Bal. 59; Ata-ur-Rehman Qadri v. Capital Development Authority 2016 CLC 132; Gul Usman v. Deputy Commissioner 2014 CLC 1681; Lucky Enterprises v. Zeal Pak Cement PLD 2013 Sindh 277 and Muhammad Hussain v. Muhammad Shafi 2004 SCMR 1947 rel.

Shahood Ahmed Khan Kakar for Petitioners.

Saifullah Khan Durrani for Respondent 1.

Saifullah Sanjrani, Assistant Advocate General (A.A.G.) for Respondents Nos. 2 and 3.

Date of hearing: 15th August 2024.

JUDGMENT

GUL HASSAN TAREEN, J.---This civil revision petition is directed from the order and decree dated 27 November 2023, whereby an appeal preferred by the respondent 1, against his suit's rejection order, was allowed by the learned Additional District Judge-I, Quetta and after setting aside the order dated 21 July 2023 passed by the learned Civil Judge-IV, Quetta ('Trial Court'), remanded back the case to the Trial Court with direction to decide the suit afresh on merits in accordance with the law.

2. Briefly, facts of the case are that respondent I had instituted a civil suit before the Court of learned Civil Judge, Sariab Division Quetta. In the suit, petitioners submitted written statement and petitioners' learned counsel filed memo of appearance. Petitioners made an application under Order VII, Rule 10, the Civil Procedure Code, 1908 ('C.P.C.') for return of the plaint on the ground that the Court has no territorial jurisdiction. The application was allowed vide order dated 26 May 2022 and the plaint was returned. After return of the plaint, respondent 1 represented the same plaint along with the proceedings and the record before the learned Senior Civil Judge-I, Quetta for trial. The plaint was marked to the learned Civil Judge-IV, Quetta. The learned Trial Court commenced proceedings and started recording respondent 1's evidence, when petitioners made an application under Order VII rule 11, the C.P.C. for rejection of the plaint. The application was contested by the respondent 1, however, the Trial Court vide order dated 21 July 2023 rejected the plaint. On filing appeal by the respondent 1, the suit's rejection order was set-aside by the Appellate Court and the case was remanded back to the Trial Court.

3. Mr. Shahood Ahmed Khan Kakar, learned counsel representing petitioners states that respondent 1's plaint was returned by the learned Civil Judge, Sariab Division Quetta, therefore, respondent 1 couldn't have represented the same plaint along with the written statement, case diaries etc. rather, he should have had to institute a fresh suit and the Trial Court should have, commenced the proceedings as if the suit was instituted for the first time and, allowed the petitioners to file written statement for, the proceedings conducted by the Court of institution had no territorial jurisdiction, thus, the proceedings were 'coram non judice', therefore, representation of the same plaint was illegal. Consequently, the Trial Court had rightly rejected the plaint under Order VII, Rule 11(d), the C.P.C., being barred by the law of Order VII, Rule 10, the C.P.C.. He placed reliance on the following case laws:-

Pakistan Telecommunication Ltd. v. Faizan Bibi (PLD 2013 Sindh 80)

Saleem Mehtab v. Refhan Best Food Ltd. (2010 MLD 1015)

Zubaida Begum v. Muhammad Saeed (1991 MLD 1312).

4. Mr. Saifullah Khan Durrani, learned counsel representing respondent No. 1, to begin with states that on representation of the same plaint and record of the suit so returned, the petitioners had participated in the proceedings and their learned counsel had not filed a fresh memo of appearance. In addition, states that petitioners' learned counsel had cross-examined respondent No. 1's witnesses and did not raise objection on the presentation of the same plaint before the Trial Court, as such, after taking part in the proceedings, their application for rejection of the suit was barred by the doctrine of 'Estoppel'. Furthermore, states that the provisions of Order VII, Rule 11, the C.P.C. couldn't have been pressed into service by the petitioners for, the suit was not barred by any law, therefore, the Appellate Court vide impugned order has rightly remanded back the case to the Trial Court for its decision in accordance with law. In conclusion, the learned counsel placed reliance on the following case laws:-

Abdul Hameed Khan v. Nasrullah (PLD 2021 Balochistan 59),

Ata-ur-Rehman Qadri v. Capital Development Authority (2016 CLC 132)

Gul Usman v. Deputy Commissioner (2014 CLC 1681)

Lucky Enterprises v. Zeal Pak Cement (PLD 2013 Sindh 277).

Mr. Saifullah Sanjrani, learned AAG, representing respondents Nos. 2 and 3 adopts the arguments of respondent No. 1's learned counsel.

5. Heard and have gone through the record, the relevant provisions in the C.P.C and the case laws cited by the learned counsel.

6. The main contention of petitioners' learned counsel is that, that on the return of plaint, the respondent No. 1 should have instituted a fresh suit instead of representing the returned plaint before the Court of learned Senior Civil Judge-I, Quetta. Such contention of petitioners' learned counsel is not correct. When a suit is rejected under Order VII, Rule 11, the C.P.C, plaintiff may bring a fresh suit under Order VII, Rule 13, the C.P.C. Likewise, when a suit is dismissed under Order IX, Rule 2, the C.P.C. in consequence of the failure of the plaintiff to pay the Court fee or postal charges (if any) chargeable for service of summons upon the defendant or where suit is dismissed when neither party appears under Order IX, Rule 3, the C.P.C, the plaintiff may (subject to the law of limitation) bring a fresh suit under Order-IX, Rule 4, the C.P.C. Plaintiff can also institute a fresh suit under Order XXIII, Rule 1(2), the C.P.C. when he withdraws his suit on account of some formal defect in the suit. Apart from the provisions of Order VII, Rule 13, Order IX, Rule 4 and Order XXIII, Rule 1(2), the C.P.C, nothing in the C.P.C shall be deemed to authorize any plaintiff to institute a fresh suit on the strength of same cause of action. Under Order VII, Rule 10(1), the C.P.C., 'the plaint shall at any stage of the suit be returned to be presented to the Court in which the plaint should have been instituted'. Order VII rule 10 (1), the C.P.C. enjoins the Court not having jurisdiction to return the plaint. When a plaint is presented before a Court not having territorial and or pecuniary jurisdiction, the Court shall return the plaint with a brief statement of the reasons for returning it for its presentation to the Court which has territorial and or pecuniary jurisdiction i.e., in which the suit should have been instituted. The expression 'at any stage of the suit' in Order VII, Rule 10(1), means and includes, the very initial or the final, stage of the suit. Suit at very initial stage means and includes, the return of plaint, at the date of its institution and registration under Order IV, Rules 1 and 2, the C.P.C. and before issuance of summons to the defendant under Order V, Rule 1, the C.P.C. Suit at the final stage means and includes, the return of plaint at any stage before the pronouncement of judgment. At final stage, when a suit is returned, it comprises upon pleadings, issues, evidences and miscellaneous proceedings, whereas, at very initial stage, plaint comprises upon copy of plaint and the annexures.

7. Under Order VII, Rule 10(2), the C.P.C., 'on returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it'. Therefore, return of plaint means the return of the entire record of the suit to the plaintiff/s. Plaintiff/s may represent the plaint (along with entire proceedings) to the Court having territorial as well as the pecuniary jurisdiction. Thus, on return of plaint, plaintiff is not authorized by the C.P.C to bring a fresh plaint. On representation of the same plaint, the Court shall proceed with the suit from the point at which the plaint was returned. Under section 24, the C.P.C., upon transfer of suit, the transferee Court has the option either to retry the matter or proceed from the point at which it was transferred. However, on representation of plaint before the Court having territorial and pecuniary jurisdiction, the C.P.C. does not prescribe such option which authorizes the Court before which the plaint is represented, to retry the matter. The Court shall proceed from the point at which the plaint was returned by the Court not having the territorial and or the pecuniary jurisdiction. All proceedings held by the Court not having the territorial and or the pecuniary jurisdiction shall not be deemed 'coram non judice'.

8. At law, there is distinction between want of inherent jurisdiction which renders the proceedings and judgment a nullity and irregular exercise or assumption of jurisdiction which do not render the proceedings a nullity. In case of want of inherent jurisdiction, the proceeding and judgment would be void, whereas, in case of want of territorial jurisdiction and or pecuniary jurisdiction, it would not render the proceedings and judgment a nullity unless there has been a consequent failure of justice. It is a settled proposition of law that proceedings conducted and order passed by Court not having jurisdiction are nullity, however, section 21, the C.P.C. and section 11, the Suits Valuation Act 1887 ('Act 1887') prescribe two exceptions to this rule. Sections 16 to 20 regulate the territorial jurisdiction of the Court of first instance and section 21 makes an exception to these sections. Therefore, judicial proceedings conducted by a Court not having territorial jurisdiction cannot be held void. With reference to objection relating to territorial jurisdiction, section 21, the C.P.C. enacts that, 'no objection to the place of suing should be allowed by an Appellate or Revisional Court unless there was consequent failure of justice'. Same analogy has been

adopted in section 11 of the Act 1887 with reference to pecuniary jurisdiction. The wisdom underlying sections 21 and 99, the C.P.C. and section 11, the Act 1887 is the same that, when a case had been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice. Objections to jurisdiction both territorial and pecuniary are technical and not open to consideration by the Appellate Court unless there has been a prejudice on the merits.

Thus, the contention of petitioners' learned counsel that the proceedings conducted by the Civil Judge, Sariab prior to the return of the plaint, should be treated a nullity, is not correct under the afore discussed provisions of law.

9. Return of the plaint and, its representation before the Court having territorial and pecuniary jurisdiction, shall be deemed a fresh institution merely for the purpose of limitation. In computing the period of limitation, the period spent in between the institution and return of the plaint before the Court not having territorial jurisdiction shall not be excluded from the limitation prescribed for any suit. The limitation for such suit would run from the date of cause of action. Where during pendency of suit before the Court not having territorial and or pecuniary jurisdiction, time limitation for such suit expires, the plaintiff may amend the suit to claim exemption from the law of limitation within the purview of section 14, the Limitation Act 1908 read with Order VII, Rule 6, the C.P.C.. As such, representation of plaint would be a fresh institution merely for the purpose of limitation and the proceedings conducted by the Court not having territorial jurisdiction cannot be held coram non judice and upon representation of plaint, the Court shall not commence the proceedings of suit from initial stage rather would proceed from the point at which it was returned.

10. In the instant case, on the representation of plaint, the petitioners had entered appearance before the Trial Court and started participating in the proceedings without raising any objection. The Trial Court commenced examining the evidence of respondent No. 1 and petitioners' learned counsel had cross-examined respondent 1's witness. On representation of plaint, petitioners had not raised an objection at the earliest possible opportunity that suit should not be tried from the point at which it was returned and had not claimed that they would submit a fresh written statement. Petitioners had participated in the proceedings from the point at which the Trial Court commenced the proceedings. Petitioners by their conduct had waived the objection and acknowledged the proceedings of the Trial Court from the point at which it was when the plaint was returned. Petitioners failed to demonstrate, if any, prejudice has been caused to them by the proceedings held by the Court not having the territorial jurisdiction and by the proceedings held by the Trial Court from the point at which the plaint was represented. Thus, application made by the petitioners under Order VII, Rule 11, the C.P.C. was barred by the doctrine of waiver. It is a settled proposition at law that where a party participated in the proceedings before a Court whose authority to adjudicate upon doesn't suffer from inherent defect of jurisdiction, such party cannot afterward raise objection on the proceedings conducted by such Court. Reliance is placed on the case reported as Muhammad Hussain v. Muhammad Shafi (2004 SCMR 1947).

On this count again, petitioners' learned counsel contention is not correct. Vide impugned order; the Appellate Court has rightly set-aside the suit's rejection order passed by the Trial Court, which doesn't suffer from any error of law and of jurisdiction which may attract the provision of section 115(1), the C.P.C.

Case laws cited by the petitioners' learned counsel are found to be distinguishable on facts.

Resultantly, this civil revision petition is dismissed. The parties shall, however, bear their own costs.

SA/72/Bal.

Petition dismissed.