JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A.No.74 of 2014
Rafaqat Hussain Raja and others
Versus
Mujib-ur-Rehman Kiani

Date of Hearing:	22.10.2019
Appellants by:	M/s Muhammad Saleem and Birjis Rizvi, Advocates
Respondent by:	Mr. Mujib-ur-Rehman Kiani/respondent in person.

MIANGUL HASSAN AURANGZEB, J:- Through the instant regular first appeal, the appellants/defendants impugn the judgment and decree dated 30.05.2014 passed by the Court of the learned Civil Judge, Islamabad whereby suit for damages for an amount of Rs.30,00,000/- instituted by the respondent/plaintiff was partially decreed for an amount of Rs.15,00,000/-.

2. Learned counsel for the appellants submitted that the respondent had no cause of action against the appellants; that the pleadings in the respondent's suit are not just vague and ambiguous but are also scandalous; that the facts of the case did not justify a decree of Rs.15,00,000/- against the appellants; that in the suit, the respondent had alleged that the termination of his services were caused by appellant No.1; that since the respondent's appeal against the termination of his services had been dismissed by the Federal Service Tribunal, his claim for damages for the termination of his services was correctly turned down by the learned Civil Court; that the learned Civil Court awarded damages in the respondent's favour only on the ground (i) that an allegation had been made against the respondent that he had committed *zina* with a female employee, and (ii) that the respondent's wife had left him due to the baseless allegations against the respondent; that grave error was committed by the learned Civil Court by giving credence to the respondent's stance that appellant No.1/defendant No.1 had alleged that the respondent had committed *zina* with a female employee; that the respondent had produced no independent evidence to prove that such an

allegation had been made by appellant No.1 against him; and that the mere fact that the respondent's wife had left him could not *ipso facto* entitle the respondent to the award of damages by the appellants.

3. Learned counsel for the appellants further submitted that at no material stage was any F.I.R. registered against the appellants at the respondent's instance; and that the learned Civil Court was correct in holding that the respondent's claim for damages for injury caused to him by the appellants was barred by time. Learned counsel for the appellants further submitted that while the instant appeal was pending, the respondent had initiated execution proceedings against the appellants; that in the execution proceedings, the appellants had furnished a surety; that even though the property with respect to which the surety was given was reported to have been owned by appellant No.1, the learned Executing Court nonetheless required appellant No.1 to deposit the decreetal amount to his extent in cash; that appellant No.2 is appellant No.3's son; that after appellant No.3 passed away on 26.02.2017, the decree holder on 10.01.2018 had made a statement that he had waived his right to recover Rs.5,00,000/- from appellant No.3; that appellant No.2 paid Rs.4,90,000/- to the respondent in satisfaction of the decree to his extent. Learned counsel for the appellants prayed for the impugned judgment and decree to be set-aside and for an order of restitution to be made.

4. On the other hand, the respondent appeared in person and submitted that the impugned judgment and decree passed by the learned Civil Court does not suffer from any illegality; that the damages awarded in the respondent's favour were less than the amount claimed by him in his suit; that the respondent had suffered grave mental stress and agony at the hands of the appellants; that appellant No.1 had become inimical against the respondent because the latter had not fulfilled the former's desire to marry his daughter; that this had enraged appellant No.1 who caused the respondent's services to be terminated; that in order to lower the respondent in the estimation of the public, appellant No.1 had falsely alleged that the respondent had committed *zina* with a

female employee; that the anxiety caused to the respondent by the termination of his services and the baseless allegations of *zina* against him disrupted his family life resulting in his wife leaving for China; that the appellants had also thrown acid on the respondent and had tried to strangle him with a rope; that since there was nothing on the record to contradict the evidence adduced by the respondent, the learned Civil Court did not commit any illegality in passing the impugned judgment and decree; that the learned Executing Court had executed the impugned judgment and decree by following the procedure prescribed by law; and that the respondent had shown leniency to appellants No.2 and 3 by accepting Rs.4,90,000/- instead of Rs.10,00,000/- from them. The respondent prayed for the appeal to be dismissed.

5. We have heard the contentions of the learned counsel for the appellants and the respondent and have perused the record with their able assistance.

6. The record shows that vide letter dated 07.07.2001, the respondent was employed as Administrative Officer (BPS-17) in the Ministry of Food, Agriculture and Livestock on contract basis for a period of two years. Clause 14 of the respondent's employment contract provided that his appointment during the period of contract was liable to termination on thirty days' notice or payment of basic pay in lieu thereof without assigning any reason. Vide notification dated 18.11.2002, the respondent's contract appointment was terminated pursuant to clause 14 of the said employment contract.

7. The respondent assailed the termination of his contract appointment before the Federal Service Tribunal, Islamabad in appeal No.364(R)(CS)2003. Vide order dated 20.01.2004, the said appeal was dismissed. The said order dated 20.01.2004 was not challenged any further.

8. On 26.02.2003, a legal notice was sent on the respondent's behalf to appellant No.1, wherein a claim of damages amounting to Rs.20,00,000/- had been made. In the said legal notice, appellant No.1 was accused of committing corruption and financial irregularities in the Ministry of Food, Agriculture and Livestock.

Appellant No.1 was also accused of harassing and humiliating the respondent.

9. On 05.04.2004, the respondent filed a suit for recovery of damages amounting to Rs.30,00,000/- against the appellants before the learned Civil Court. In the said suit, it was pleaded *inter alia* that the respondent had declined a proposal sent on appellant No.1's behalf for the respondent to marry appellant No.1's daughter; that appellant No.1 had made a baseless allegation that the respondent had committed *zina* with a female employee in the Ministry of Food, Agriculture and Livestock; that an inquiry had resulted in a finding that the respondent's character was aboveboard; that appellant No.1 had passed a bill by bribing officials, including the Accountant General Pakistan Revenue; that appellant No.1 was offended by the respondent's objection to the release of the said bill; that the respondent had brought the corrupt practices committed by appellant No.1 to the notice of the Minister and National Accountability Bureau; that appellant No.1, in order to get rid of the respondent, referred the post against which the respondent was working to the Federal Public Service Commission; that at the instance of appellant No.1, severe thrashing was given to the respondent by appellants No.2 and 3 on 03.09.2002; that appellant No.3 put a rope around the respondent's neck whereas appellant No.2 threw acid on the respondent which caused burns to the left side of his right leg; that due to these incidents, the respondent's wife, who is a Chinese national, felt insecure and decided not to take Pakistani nationality; that appellant No.1 had employed armed men to threaten the respondent and his family; that in order to humiliate the respondent, he was made by appellant No.1 to travel to Gujranwala in a truck carrying transformers; that the respondent was terminated from service at appellant No.1's instance; that after his termination, the respondent was not able to get employment elsewhere; that due to the acts of the appellants, the respondent suffered extreme mental and physical torture; that these events caused the respondent's wife to leave Pakistan; that the cause of action had accrued to the respondent on 03.09.2002; and that the

respondent was entitled to compensation amounting to Rs.30,00,000/-. We do not deem it appropriate to mention the name of the female employee with whom the respondent was alleged to have committed *zina*.

10. The appellants contested the said suit by filing a written statement. In the said written statement, it was pleaded *inter alia* that the National Accountability Bureau had probed into the allegations of irregularities in the Ministry of Food, Agriculture and Livestock/National Veterinary Laboratory, and the officials of the said Ministry were exonerated; and that the respondent's appeal against the termination of his services was also dismissed by the Federal Service Tribunal.

11. From the divergent pleadings of the contesting parties, the learned Civil Court, vide order dated 12.07.2004, framed issues. On 25.04.2005, the appellants were proceeded against *ex parte*. The respondent appeared as PW-1 and his *ex parte* examination-in-chief was recorded on 08.07.2005. Subsequently, the appellants filed an application for setting aside the order dated 25.04.2005 whereby they were proceeded against *ex parte*. Vide order dated 24.02.2006, the said application was allowed and the order dated 25.04.2005 was recalled and the matter was adjourned for the cross examination of the respondent/PW-1. On 17.04.2007, the respondent/PW-1 was cross-examined.

12. Since the valuation in the respondent's suit was Rs.30,00,000/-, the said suit being beyond the pecuniary jurisdiction of the learned Civil Court was transferred to this Court. On 03.12.2008, this Court appointed a local commission to record the evidence of the parties. The local commission's report dated 22.06.2009 shows that the respondent had raised an objection over the appointment of a new counsel by the appellants. The respondent had insisted that only the appellants' counsel before the Civil Court could represent the appellants, or alternatively the appellants should conduct their case themselves. The local commission noted that the objection raised by the respondent was against the well-settled law and practice. It was also noted that the respondent *"got annoyed and did not come forward to cross*

examine the witnesses of the defence in protest". **The local commission had accepted the appellants' request to produce their evidence in the shape of affidavits.**

13. As a consequence of the judgment of the Hon'ble Supreme Court in the case of Sindh High Court Bar Association Vs. Federation of Pakistan (PLD 2009 S.C. 879), the Islamabad High Court ceased to exist and the suit was transferred back to the learned Civil Court. The respondent filed an application for the setting aside of the local commission's report. The said application was not decided.

14. The record shows that on 17.12.2011, the appellants were once again proceeded against *ex parte* and the matter was adjourned for the respondent's *ex parte* evidence. Although after this stage no further evidence was recorded, on 21.11.2012, the learned Civil Court received the respondent's written arguments and on 18.12.2012, the respondent's suit was dismissed.

15. On 21.01.2013, the respondent preferred an appeal before the Court of the learned Additional District Judge, Islamabad. The appellants had appeared in the said appeal. Vide judgment dated 20.11.2013, the said appeal was allowed and the matter was remanded to the learned Civil Court.

16. In the post remand proceedings, the suit was entrusted for adjudication to the Court presided over by Mr. Muhammad Shabbir, learned Civil Judge 1st Class, Islamabad. Vide order dated 27.01.2014, the learned Civil Judge directed the contesting parties to appear before the learned District Judge (East), Islamabad on 29.01.2014. In the said order, the learned Civil Judge had recorded the observations adverse to the respondent. For the purposes of clarity, these observations are reproduced herein below:-

> ***"After dismissal of the suit vide above mentioned judgment, the attitude of the learned counsel towards the undersigned became arrogant and insulting. Mr. Mujeeb-ur-Rehman while appearing in different cases has been shouting on each and every date of hearing and stated that he is an advocate and this is his personal case. He at one occasion while appearing in case titled "Mujeeb-ur-Rehman v/s Rafaqat Hussain" stated that I (Muhammad Shabbir) am bent upon to ruin his (Mr. Mujeeb-ur-Rehman's Practice) as he will not let me work as a Judge in Islamabad as a large number of advocates are at his back and they will set everything right."***

17. On 30.01.2014, the suit was transferred to the Court presided by Raja Farrukh Ali Khan, learned Civil Judge (East) Islamabad. On 30.05.2014, the learned Civil Court decreed the respondent's suit to the extent of Rs.15,00,000/-. The said judgment and decree has been assailed by the appellants in the instant appeal.

18. As mentioned above, on 18.12.2012, the learned Civil Court had dismissed the respondent's suit. Since the value of the suit was Rs.30,00,000/-, as is apparent from paragraph 24 of the suit, an appeal against the judgment and decree dated 18.12.2012 lay to this Court and not to the Court of the learned District Judge, Islamabad. This is because the Court of the learned District Judge's jurisdiction was to adjudicate upon appeals arising from suits having valuation less than Rs.25,00,000/-. Since the Court of the learned Additional District Judge did not have the pecuniary jurisdiction to adjudicate upon the respondent's appeal, therefore the judgment dated 20.11.2013 passed by the Court of the learned Additional District Judge, Islamabad was without jurisdiction and *coram non judice*. The post remand proceedings pursuant to the said judgment dated 20.11.2013 were equally without jurisdiction and *non est*. Be that as it may, since we heard the appeal at length, we propose to decide the instant appeal on merits.

19. Perusal of the impugned judgment and decree dated 30.05.2014 shows that the learned Civil Court did not award any damages on account of the respondent's termination from service since such termination had been upheld by the Federal Service Tribunal vide judgment dated 20.01.2004. The learned Civil Court, in the last paragraph of the impugned judgment, has clarified the basis on which damages of Rs.1.5 million were awarded in the respondent's favour. The learned Civil Court held that the basis for the award of damages were:-

(i) wrong allegation of *zina* against the respondent; and

(ii) torture caused by baseless allegation and maltreatment suffered by the respondent due to which his wife left for China.

20. For the purpose of clarity, the last paragraph of the impugned judgment is reproduced herein below:-

"It is worthwhile to mention here that though plaintiff has not succeeded to prove his entire case, but still <u>he succeeded to prove to the extent of wrong allegation of zina and torture due to the fact his wife left to China after these baseless allegations and mal-treatment.</u> The said allegation is of course serious in nature and caste very negative effects on the character of the aggrieved person and that too last for whole life. Plaintiff is undoubtedly not only qualified person but also married to foreign national. In order to measure, quantum of damages it is not always necessary that plaintiff has to place on record plethora of documents to prove his case rather his character, education, marital status are sufficient to prove this fact. Plaintiff's wife also left Pakistan due to the problems caused to plaintiff and that too has created lots of fuss and torture to the plaintiff and quantum of damages is very difficult to determine in such like scenario. However, in the light of attending circumstances, suit of the plaintiff is partially decreed to the extent of Rs.1.5 million. No order as to the costs. Decree sheet be drawn up. File be consigned to record room after its due completion/compilation"
(Emphasis added)

21. In support of his suit, the respondent appeared as a sole witness. The respondent did not produce any independent evidence to substantiate his allegations against the appellants. As regards the allegation of *zina*, the respondent did not produce any witness before whom such an allegation had been made by appellant No.1. No record pertaining to any inquiry in which the respondent had been exonerated had been brought on the record. For the learned Civil Court to have passed a decree against appellant No.1 on the bare testimony of the respondent is violative of the settled norms of justice.

22. The respondent also claimed that he had suffered mental stress and agony at the hands of the appellants, and to substantiate this claim, he had produced a prescription (Exh.P-I(i) to P-I(iii) which is in the Chinese language. The English translation of the said prescription by some unnamed person in shop No.123, B/G, Crystal Arcade, E-13, Ayub Market, F-8 Markaz, Islamabad was produced along with the said prescription. Since the authors of the said prescription and the translation were not produced as witnesses, the same could not have been given evidentiary value by the learned Civil Court. The prescription, dated 01.10.2002 from the Federal Government Services Hospital, Islamabad, was on the record, but not formally exhibited. Therefore, the said prescription could not have formed the basis for the decree.

23. As regards the learned Civil Court awarding damages against the appellants for the respondent's wife having left him and rejoined him later is also most peculiar. If not any other witness, the respondent should have produced his wife to testify that she had left him because of the adverse circumstances created by the appellants.

24. The respondent's wife leaving him did not *ipso facto* entitle the respondent the award of damages against the appellants. In paragraph 19 of the suit, it was pleaded that *"obsessed by these untoward events"*, the respondent's wife left for China. What these *"untoward events"* were are not specified in the impugned judgment. The termination of the respondent's employment; the respondent not being able to get employment after his termination; and the alleged physical injury caused to the respondent by the appellants could not have made the basis for an award of damages by the learned Civil Court in the respondent's favour. The only event that the learned Civil Court appears to have found to be the cause of torture to the respondent is the *"wrong allegation of zina"*.

25. In his examination-in-chief, the respondent deposed that appellant No.1 had accused him of committing *zina* with a female officer and had complained to Khair Muhammad Junejo, Minister for Food about the respondent, and that the Minister had sent Talib Hussain (Private Secretary) and Muhammad Ishaq (Driver) to inquire into the matter. The respondent did not even apply to the Court to issue summons to Khair Muhammad Junejo, Talib Hussain or Muhammad Ishaq so that they could give testimony in support of the respondent's case.

26. It was incumbent upon the respondent to prove that it was only the allegation of *zina* made against him levelled by appellant No.1 that had put him in such anguish as to cause the respondent's wife to leave him. Since the respondent failed to prove that appellant No.1 had hurled the allegation of *zina* against the respondent, the question of him being awarding damages for his wife leaving him did not arise. In his suit, the respondent had not even pleaded that appellants No.2 and 3 had made allegation of

zina against him. This being so, the award of damages against the said appellants was uncalled for.

27. The pleading in the suit against appellants No.2 and 3 was that on 03.09.2002, they had given a severe thrashing in the office premises to the respondent, and thereafter appellant No.3 had put a rope around the respondent's neck whereas appellant No.2 had thrown acid on the respondent. Even though the alleged thrashing was said to have taken place in the office premises, the respondent chose not to produce any witnesses to support or buttress such an allegation. Now, for compensation for injury to the person, Article 22 of the First Schedule to the Limitation Act, 1908 provides for a limitation period of one year from the date when the injury was committed. Consequently, the learned Civil Court held that the respondent's claim for damages against the appellants on the ground that acid was thrown on him or that an attempt was made to strangulate him with a rope, were *"hit badly by the law of limitation"*. Since the respondent's claim on the basis of bodily injury was held by the learned Civil Court to be time barred, it is not understandable as to how the learned Civil Court could award damages against appellants No.2 and 3.

28. It may be mentioned that in paragraph 20 of the suit, it was pleaded that appellants had also caused extreme mental and financial stress to the respondent. If the learned Civil Court had held the respondent's claim for damages on the basis of physical injury to be barred by time, how could it award damages for mental or financial stress caused by such physical injury. It is equally out of the ordinary for the learned Civil Court to have awarded damages against the said appellants when there was no finding of any criminal Court much less any law enforcing agency against them.

29. The respondent's claim for damages against the appellants is based on torts. In paragraph 20 of the suit, the respondent pleaded that he had *"suffered extreme mental and physical torture, financial stress and irreparable loss, humiliation in the society and relations"*. He attributed such loss and injury to the *"illegal, unlawful, malafide, biased, prejudicial and malicious actions"* of the

appellants. For a plaintiff to be successful in claiming damages of the nature sought against the appellants, he had to establish that the party against whom damages were prayed for had acted in a calculated manner with malice and bad intent to cause physical, mental or psychological injury, without legal justification or excuse. Reference in this regard may be made to the law laid down in the case of Ahmed Hassan Vs. Muhammad Arshad (2016 PLC (C.S.) 845). In the case at hand, the respondent had not been able to discharge the said legal burden so as to justify his claim for damages against the appellants. Bare allegations of malice and prejudice cannot be made the yardstick for the award of damages of the amount that the learned Civil Court so generously awarded in the respondent's favour.

30. Another vital aspect of the case that escaped the attention of the learned Civil Court was that the respondent in paragraph 22 of his suit had pleaded that the cause of action had accrued to him on 03.09.2002. In the said suit, there is no date subsequent to 03.09.2002 on which the respondent claims to have suffered at the appellants' hand. It is not disputed that on 26.02.2002, the respondent had sent a legal notice to appellant No.1 claiming an amount of Rs.2 million against him. For filing a suit for compensation for illegal, irregular or excessive distress, Article 28 of the Schedule to the Limitation Act, 1908 provides a limitation period of one year from the date of the distress. The period of one year after the date on which the respondent claims that the cause of action accrued to him expired on 03.09.2003, whereas the suit was instituted by him on 05.04.2004. Instead of dismissing the respondent's suit as time barred, the learned Civil Court held that since the limitation period for filing a suit for recovery of money was three years, the respondent's suit was within time. The prayer clause of the respondent's suit makes it clear that the said suit was for damages.

31. What also prevailed over the learned Civil Court in passing said decree was that the respondent had not been cross-examined. The learned Civil Court held that since the respondent had not been cross-examined on his deposition regarding the allegation of *zina*

made against him, and his wife having left Pakistan for China, such deposition would be treated as true. We are of the view that the learned Civil Court ought to have considered the case in its totality by giving due regard to the fact that the respondent had not produced any independent evidence or even his wife to support his deposition. In the case of Shazia Qamar Vs. Bashira Bibi (2016 CLC 15), it has been held *inter alia* that a statement made during the examination-in-chief and not controverted in the cross-examination nevertheless is to be construed in the light of the pleadings of the party and the other evidence produced and placed on the record. In the case at hand, the learned Civil Court did not even determine whether the respondent's claim for damages was on the basis of the tort of libel or slander. Even though in paragraph 20 of the suit, the respondent pleaded that he had suffered humiliation *"in the society and relations"*, yet he did not produce any member of the society or any of his relations to depose that the allegations (if any) made against him had brought him in disrepute. In the absence of such evidence, the decree against the appellants is not sustainable.

32. In view of the above discussion, the instant appeal is allowed; the impugned judgment and decree dated 30.05.2014 is set aside; and as a result, the respondent's suit for damages is dismissed. Since we are of the view that the proceedings in the suit against the appellants were not just frivolous and vexatious, but a gross abuse of the process of the Court, we are allowing this appeal with costs throughout in addition to costs of Rs.1,00,000/- in terms of Section 35(1)(iii) C.P.C. as amended by the Costs of Litigation Act, 2017.

33. It is an admitted position that Rs.5,00,000/- was paid by appellant No.1 to the respondent through the learned Executing Court whereas appellants No.2 and 3 had paid Rs.4,90,000/-to the respondent out of Court in satisfaction of the decree to the extent as against the said appellants. Since we have found that the impugned judgment and decree passed by the learned Civil Court is liable to be set-aside and the respondent's suit dismissed, he is placed under a continuing obligation to restitute the amount received from the appellants on the basis of the said judgment and

decree. In the case of Sh. Mehraj Din Vs. Ghulam Muhammad (PLD 1965 Lahore 374), the Hon'ble Mr. Justice Muhammad Akram (as he then was) held that restitution of property follows automatically upon the decree being varied or reversed in appeal and a specific direction for restitution is not necessary to be made by the appellate Court. In the case of Khalid Rasool Vs. Muhammad Sharif (1987 CLC 253), it was held *inter alia* that restitution of possession to a party who succeeds in getting an adverse order reversed in appeal is nothing more than retracing the steps to nullify the proceedings whereby the party who was not entitled to the benefit had obtained it from the Court under false colours.

34. Section 144 of the Code of Civil Procedure, 1908 ("C.P.C.") provides *inter alia* that when a decree passed against a party is reversed, the Court of first instance shall, on the application of such a party, entitle to benefit by way of restitution may make orders, including orders for refunds etc. Section 144 is an embodiment of the doctrine of restitution and has been held not to confer any new substantive right which an aggrieved party does not possess under the general law. It is well settled that a Court has the inherent power to direct restitution, and that Section 144 C.P.C. is not exhaustive. Where an appellate Court orders restitution it does so in exercise of its inherent powers under Section 151 C.P.C. and not under Section 144 C.P.C. It has been so held in the case of Mahmood ul Hassan Vs. District Judge, Chakwal (2009 YLR 780). Furthermore, it was held that the application for restitution under Section 144 C.P.C. could be made to the Court of first instance where the decree is varied or reversed by such Court.

(CHIEF JUSTICE) (MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

(CHIEF JUSTICE) (JUDGE)

*Qamar Khan**

APPROVED FOR REPORTING