

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R. No.341/2017

Federal Board of Intermediate and Secondary Education, Islamabad
Versus

Mst. Nosheen Maqbool

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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28.05.2019

**Mir Afzal Malik, Advocate for the petitioner
Respondent's father in-person along with the respondent.**

Through the instant civil revision petition, the petitioner, Federal Board of Intermediate and Secondary Education, Islamabad ("F.B.I.S.E."), impugns the judgment and decree dated 15.07.2017, passed by the Court of the learned Additional District Judge (West), Islamabad, whereby F.B.I.S.E.'s appeal against the judgment and decree dated 29.04.2016 and the order dated 11.04.2017, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said judgment and decree dated 29.04.2016, the learned Civil Court had decreed the respondent's suit for declaration and permanent injunction praying for the correction of her date of birth from 23.03.1990 to 10.10.1994. Vide order dated 11.04.2017, the learned Civil Court dismissed the application under Order IX, Rule 13 read with Section 12(2) and 151 C.P.C. seeking recall of the said judgment and decree dated 29.04.2016.

2. The facts leading to the filing of the instant petition are that on 07.04.2010, F.B.I.S.E. had issued a matriculation certificate to the respondent. In the said certificate, the respondent's date of birth was entered as 23.03.1990. On 27.05.2014, a birth certificate was issued by the National Database Registration Authority showing the respondent's date of birth as 10.10.1994.

3. On 29.09.2014, the respondent filed a suit for declaration etc. seeking *inter-alia* a direction to F.B.I.S.E. to correct the entry of the respondent's date of birth in her matriculation certificate to 10.10.1994. The petitioner was proceeded against *ex-parte* by the learned Civil Court. After the framing of issues and recording of the respondent's evidence, the learned Civil Court vide judgment and decree dated 19.11.2015, decreed the said suit. The said judgment and decree was assailed by F.B.I.S.E. before the Court of the learned Additional District Judge, Islamabad. The appeal was allowed and the matter was remanded to the learned Civil Court. In the post-remand proceedings, the matter was fixed for cross-examination of the respondent's witnesses. On 30.03.2016, F.B.I.S.E. was again proceeded against *ex-parte*. The proceedings culminated in the judgment and decree dated 29.04.2016, whereby the learned Civil Court once again decreed the respondent's suit.

4. On 27.07.2016, F.B.I.S.E. filed an application under Order IX, Rule 13 read with Section 12(2) of the Code of Civil Procedure, 1908 ("C.P.C.") for setting aside the said judgment and decree dated 29.04.2016. Vide order dated 11.04.2017, the said application was dismissed.

5. F.B.I.S.E. preferred an appeal against the said order dated 11.04.2017 before the Court of the learned Additional District Judge, Islamabad. In the said appeal, F.B.I.S.E. had also assailed the judgment and decree dated 29.04.2016. Vide the impugned judgment and decree dated 15.07.2017, F.B.I.S.E.'s said appeal was dismissed by the learned Appellate Court.

6. The said judgment and decree dated 15.07.2017, passed by the learned Appellate Court along with the order dated 11.04.2017 and judgment and decree dated 29.04.2016, passed by the learned Civil Court have been assailed by F.B.I.S.E. in the instant civil revision petition.

7. Learned counsel for F.B.I.S.E. submitted that law favours adjudication on merits rather than technicalities; that the learned Civil Court should have given adequate opportunity to F.B.I.S.E. to cross-examine the respondent's witnesses; that the respondent has a very weak case on merits; that it is well settled that strong and unimpeachable evidence has to be produced in order to disprove the entries regarding a student's date of birth in his/her matriculation certificate; and that in the post-remand proceedings, the learned Civil Court had not issued any notice to F.B.I.S.E. before proceeding *ex-parte*. Learned counsel for F.B.I.S.E. prayed for the revision petition to be allowed and for the concurrent judgments/orders passed by the learned Courts below to be set-aside.

8. On the other hand, the respondent's father appeared and submitted that the respondent had been subjected to unnecessary litigation. He prayed for a judgment to be rendered in accordance with the law.

9. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance. The facts leading to the filing of the instant revision petition have been set out in sufficient detail in paragraphs 2 to 6 above, and need not be recapitulated.

10. After having gone through the record, I am of the view that F.B.I.S.E. had no plausible

justification or excuse not to attend the proceedings before the learned Civil Court in the post-remand proceedings. It is not disputed that while allowing F.B.I.S.E.'s appeal against the learned Civil Court's judgment and decree dated 19.11.2015, the learned Appellate Court, in its order dated 03.03.2016, had directed the parties to appear before the learned Civil Court on 11.03.2016. F.B.I.S.E. cannot claim to be unaware of the said direction in the Appellate Court's order dated 03.03.2016. Despite the fact that F.B.I.S.E. did not appear before the learned Civil Court on 11.03.2016, last and final opportunity was given to it to cross-examine the respondent's witnesses on 25.03.2016. The learned Civil Court did not commit any jurisdictional irregularity by striking off F.B.I.S.E.'s right of cross-examination under Order XVII, Rule 3 C.P.C due to F.B.I.S.E.'s said failure. Since the evidence produced by the respondent went un-rebutted, the learned Civil Court did not commit any illegality in decreeing her suit for declaration etc.

11. It may be mentioned that F.B.I.S.E., in its appeal, had not just assailed the learned Civil Court's order dated 11.04.2017 but also the judgment and decree dated 29.04.2016. F.B.I.S.E. could not have assailed the said judgment and decree in its appeal since to the said extent, it was time barred. While deciding this petition, I have confined myself to determine as to whether or not the learned Courts below were correct in dismissing F.B.I.S.E.'s application for setting aside of the judgment and decree dated 29.04.2016.

12. In view of the above, I do not find any jurisdictional infirmity in the concurrent

judgments/orders passed by the learned Courts below. Consequently, the instant revision petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*