

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R. No.208/2019
Afzal Baloch
Versus
Hamid Rasheed Qureshi

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24.05.2019	Mr. Muhammad Saleem Khan Baloch, Advocate for the petitioner.

Through the instant civil revision petition, the petitioner, Afzal Baloch, impugns the order dated 10.04.2019, passed by the Court of the learned Additional District Judge, Islamabad, whereby his appeal against the order dated 16.12.2016 as well as the *ex-parte* judgment and decree dated 21.04.2018, passed by the learned Civil Court, was dismissed. Vide the said *ex-parte* judgment and decree, the learned Civil Court had decreed the suit for recovery of Rs.3,00,000/- with costs instituted by the respondent (Hamid Rasheed Qureshi) against the petitioner and another.

2. The record shows that on 30.03.2016, the respondent had filed a suit for recovery of Rs.3,00,000/- against the petitioner and another before the learned Civil Court.

3. Apparently, the petitioner appeared before the learned Civil Court on 21.01.2017, 30.03.2017 and 27.04.2017. Since the petitioner neither appeared before the learned Civil Court nor filed a written statement on 31.05.2017, he was proceeded against *ex-parte*. Subsequently, *ex-parte* evidence of the respondent's witnesses was recorded, and vide *ex-parte* judgment and

decree dated 21.04.2018, the suit instituted by the respondent was decreed. The petitioner also appeared in the execution proceedings. He had filed an application for the setting aside of the said *ex-parte* judgment and decree, which application was dismissed as withdrawn on 15.11.2018. After this, the petitioner filed an appeal on 17.12.2018 before the Court of the learned Additional District Judge, Islamabad, assailing the said *ex-parte* judgment and decree. The said appeal was dismissed vide the impugned judgment and decree dated 10.04.2019. The concurrent orders/judgments passed by the learned Courts below have been assailed by the petitioner in the instant revision petition.

4. Learned counsel for the petitioner submitted that the learned Appellate Court erred by holding that the petitioner's appeal against the *ex-parte* judgment and decree dated 21.04.2018 was barred by time; and that the limitation period provided for filing an appeal against an *ex-parte* judgment and decree is three years. Learned counsel for the petitioner prayed for the revision petition to be allowed and the concurrent orders/judgments passed by the learned Courts below to be set-aside. In making his submissions, learned counsel for the petitioner placed reliance on the judgment reported as 2018 YLR 779.

5. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

6. As mentioned above, the petitioner was proceeded against *ex-parte* by the learned

Civil Court on 31.05.2017. Prior to this, the petitioner had tendered appearance before the learned Civil Court. In paragraph 2 of the instant revision petition, the petitioner had candidly admitted that he had appeared before the learned Civil Court but had subsequently shifted to Okara due to his illness. After the recording of *ex-parte* evidence, the learned Civil Court passed *ex-parte* judgment and decree on 21.04.2018.

7. The *ex-parte* judgment and decree dated 21.04.2018 was assailed by the petitioner in an appeal filed on 17.12.2018. The limitation period for filing an appeal against an *ex-parte* judgment and decree is not different from the limitation period for filing an appeal against a judgment and decree passed by the Trial Court after *inter-parte* proceedings.

8. After an *ex-parte* judgment and decree is passed, the aggrieved party/defendant has the option either to file an application for the setting aside the *ex-parte* judgment and decree before the learned Civil Court or to file an appeal against such a judgment and decree. Admittedly the petitioner filed an application for setting aside the *ex-parte* judgment and decree before the learned Civil Court but subsequently withdrew the same on 15.11.2018. The limitation period for filing an appeal against the said *ex-parte* judgment and decree dated 21.04.2018 expired on 20.05.2018. Since the petitioner had appeared before the learned Civil Court before the said *ex-parte* judgment and decree was passed, the limitation period of thirty days under Article 152 of the Limitation

Act, 1908 for filing an appeal under Section 96 of the Code of Civil Procedure, 1908 would commence from the date of the said *ex-parte* judgment and decree. Since the appeal was filed by the petitioner on 17.12.2018, it was grossly time barred and is liable to be dismissed as such.

9. In view of the above, the instant revision petition is dismissed in *limine*.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*