

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Muhammad Sabir etc Vs. Nazima Parveen

Date of Decision: 22.10.2019.

2. Learned counsel for the petitioners contends that respondent Nazma Parveen Malik filed a civil suit for recovery under Order XXXVII, CPC, whereby the petitioners were granted leave to appear and defend the suit vide order dated 19.09.2018, whereby the condition was imposed to submit surety bond equal to disputed amount of Rs.81,00,000/- with one surety in the like amount to the satisfaction of Trial Court; that the petitioners filed an application to recall the condition imposed in the said order or in alternate he be permitted to submit surety bond of property situated in Multan but the same was turned down without legal basis vide impugned order dated 03.04.2019; that leave has been granted to the petitioners with condition and the petitioners who are permanent resident of Multan can only arrange surety of the property situated in Multan as such they have no business relationship or business or property in Islamabad and they cannot arrange local surety; that learned Trial Court has not yet received the surety bond nor granted any permission, whereas it is right of the petitioners to be dealt in accordance with law and they should not be deprived of his fundamental right of due process of law.

3. Conversely, learned counsel for the respondents contends that the petitioners had challenged the order of granting leave to appear and defend the suit in C.R No.358/2018 before this Court, which was dismissed vide order dated 27.02.2019, in which all these questions have been dealt by this Court and now the petitioners have again filed similar application which has been dismissed through impugned order as such the petitioners are not allowed to resubmit their previous prayer and request through new application, which is otherwise hit by principle of constructive resjudicata.

4. I have heard the arguments and gone through the record.

5. Perusal of the record reveals that the respondent filed a suit for recovery of Rs.81,00,000/- under Order XXXVII CPC on the basis of negotiable instrument i.e. cheque, which was dishonoured on its presentation. The petitioners being defendants of the suit filed an application for leave to appear and defend the suit, which was allowed vide order dated 19.09.2018 subject to submission of surety bond equal to disputed amount (i.e. Rs.81,00,000/-) with one surety in the like amount to the satisfaction of learned Trial Court and as such the petitioners have challenged the said order through C.R No.358/2018, which was dismissed by this Court vide order dated 27.02.2019. The petitioners again submitted an application before learned Trial Court with the following prayer:-

“In the view of above facts and circumstances, it is therefore most respectfully prayed that order dated 19.09.2018 may kindly be recalled to the extent of imposition of the condition to submit the surety bonds equal to the disputed amount or in alternate the petitioners may kindly be permitted to submit surety bonds of Property situated in Multan, with permission to file the written statement, so that the suit may be decided after adjudication of the same on merits, in the interest of justice, so that the suit may be decided after adjudication of the same on merits, in the interest of justice, so that the very object of leave granting order dated 19.09.2018 may be fulfilled.”

6. The above referred prayer reveals that the petitioners claim that they be allowed to submit alternate surety of Multan as they are permanent resident of Multan due to which they cannot arrange surety of Islamabad although this request falls within exclusive domain of learned Trial Court in terms of order passed by learned Trial Court dated 19.09.2018, whereby learned Trial Court accepted the application for leave to appear and defend the suit.

7. Learned counsel for the petitioners has been confronted as to whether this Court in terms of section 115 CPC can take judicial notice of order dated 19.03.2019, whereby the petitioners were not allowed to submit the alternate surety, although learned counsel for the petitioners has taken simple stance that the petitioners are permanent resident of Multan and have no means in shape of property or otherwise to satisfy learned Trial Court through any property surety situated in Islamabad, however, they have made a request that they are ready to submit surety of District Multan. I have gone through the impugned order in which each and every aspect has been discussed, even order passed by this Court in C.R No.358/2018 covers all the questions raised in the instant civil revision petition, therefore, it is appropriate that order of this Court has to be read in the instant proposition. The relevant extracts of judgment dated 27.02.2019, passed by this Court in C.R No.358/2018 are reproduced as under:-

“I have gone through the record and I am in agreement with the findings of the learned trial Court as after allowing the application for leave to appear and defend with a condition, the trial Court is not empowered to amend the condition in any manner and the petitioners are bound to comply with the order as the leave was granted subject to furnishing of surety of Rs.81,00,000/- equal to disputed amount within notified time i.e. on or before 02.10.2018, whereas petitioners have filed an application on 15.10.2018 after the expiry of the notified time, hence they are guilty of contemptuous delay which is apparent on record. No illegality has been observed in the proceedings of learned trial Court and as such instant Civil Revision is misconceived and the same is hereby dismissed.”

8. The above referred order is self explanatory as such learned Trial Court has rightly rejected the application for alternate relief as the Trial Court could not amend its view and same is the case with this Court, which earlier passed judgment in C.R No.358/2018. No illegality has been observed nor any jurisdictional defect has been brought into notice of this Court.

9. In view of above discussion, this civil revision petition bears no merits, therefore, the same is dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE