

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

C.R. No.223/2018

Sheikh Humayun Nazir

versus

Additional Sessions Judge (West), Islamabad, etc.

Petitioner by: Ch. Muhammad Aslam, Advocate.

Respondents by: Mr. Muhammad Majid Bashir, Advocate for
respondents No.3(a) to 3(f)

Date of Hearing: 23.10.2019.

MOHSIN AKHTAR KAYANI, J: Through this civil revision, the petitioner has impugned order dated 28.04.2018 of the learned Additional Sessions Judge (West), Islamabad, whereby appeal filed by the petitioner against order dated 29.04.2017 of the learned Civil Judge (West), Islamabad has been dismissed.

2. Brief facts referred in the instant petition are that the petitioner filed a suit for declaration that he is entitled for rendition of accounts of respondents, which was dismissed on 20.11.2014 due to non-prosecution. Subsequently, the petitioner filed an application for restoration of his suit, which was dismissed by the learned Civil Judge vide impugned order dated 29.04.2017. Consequently, the petitioner was constrained to file an appeal against the order of the learned Civil Judge, however the same was dismissed vide impugned order dated 28.04.2018 by the learned Additional District Judge-V (West), Islamabad. Hence, the instant civil revision.

3. Learned counsel for petitioner contends that both the lower Courts have not applied their judicial mind while deciding the application filed for restoration of suit; that both the Courts below have ignored the verbal and written arguments together with the directives of the apex Court passed in a

number of reported judgments; that the impugned orders are against the settled principles of law and facts of the case, therefore, the same may be set-aside.

4. Conversely, learned counsel for respondents No.3(a) to (f) opposed the instant civil revision and in support of the impugned orders contended that both the Courts below have rightly appreciated the facts of the case together with the law on subject; that both the Courts below have passed the impugned orders in accordance with law and the same suffer from no illegality, therefore, the instant civil revision may be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioner has filed a civil suit for declaration as well as rendition of accounts against respondents No.3(a) to 3(g), however during pendency of the said suit, the petitioner was arrested on 28.06.2014 in case FIR No.98/2014, dated 19.03.2014, under Section 406 PPC, P.S. Shalimar, Islamabad, which was lodged on the complaint filed by one Asif Fareed, Secretary of M/s AHLN Company. This episode prohibited the petitioner to pursue his civil suit and eventually the suit was dismissed for non prosecution on 20.11.2014 by the learned Civil Court. The petitioner remained behind the bars and was granted post arrest bail on 22.09.2015, whereafter the petitioner filed an application for restoration of his civil suit on 09.05.2016 on the grounds that he was behind the bars and could not pursue his civil suit despite the fact that he had written different letters to the Hon'ble Chief Justice of Pakistan and that his absence was not willful, but beyond his control. The application was contested by respondent side and the learned Trial Court after hearing the parties has dismissed the application vide impugned order dated 29.04.2017. Feeling aggrieved thereby, the petitioner assailed the said order through appeal, which was dismissed on 28.04.2018 by the learned Additional District Judge-V (West), Islamabad.

7. I have gone through the each and every aspect of the case and observed that the only legal impediment in the way of petitioner is to explain the delay caused by him for filing of application for restoration of his civil suit when he was released from jail. As a matter of fact, the petitioner was granted post arrest bail on 22.09.2015, while he moved application for restoration of his suit on 09.05.2016, which evidently discloses the delay of 07 months & 15 days, and as such, he was under legal obligation to explain every day as to why he has failed to file such application within time and explain circumstances whether he has been precluded in filing application for restoration of civil suit after his release from jail.

8. The limitation period for filing of application for restoration of civil suit is clearly stipulated in the law and it is not on the basis of date of knowledge as the petitioner himself filed the suit, whereafter he was arrested in a criminal case and remained behind the bars, therefore, the onus is upon the petitioner to justify his position that the circumstances were beyond his control.

9. The entire record is silent as to the effect of sufficient cause, which has not been highlighted by the petitioner in his application for setting aside the impugned order and restoration of his suit. The period for which he remained incarcerated definitely falls in the mandate of sufficient cause, but after his release he exhausted approximately 07 and a half month without justification as to why he has not filed application for restoration of suit. It is trite law that the delay would defeat equity, especially when no explanation has been rendered for the delay. The conduct of the petitioner speaks volumes about his own misdeed as he has not justified all those acts through which he was precluded to file application for restoration after his release from jail.

10. I have gone through the orders of lower Courts and in agreement with the concurrent findings of both the Courts below as the petitioner has no case on

merits and the learned Trial Court has rightly relied upon 2013 CLC 254 (Arshad Ahmad Shad vs. Parvaiz Akhtar).

11. Even otherwise, the learned counsel for petitioner has failed to point out any jurisdictional error in the impugned orders of both the Courts below and as such, on the basis of above discussion, the instant civil revision is misconceived, therefore, the same is hereby DISMISSED.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 30th Oct 2019

JUDGE

Khalid Z.