

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**F.A.O No. 77/2018**

Malik Hasrat Hussain

Versus

Central Board of Revenue (CBR) Employees Cooperative Housing  
Society, Islamabad etc.

APPELLANT BY: Raja Zafarullah Dhanial, Advocate

RESPONDENT NO.1 BY: Sardar Muhammad Nasir Khan,  
Advocate

RESPONDENT NO.2 BY: Rao Muhammad Sarfraz, Advocate

DATE OF DECISION: 07.10.2019.

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**MOHSIN AKHTAR KAYANI, J.** Through this First Appeal against Order, the appellant has assailed the order dated 19.01.2018, passed by learned Civil Judge 1<sup>st</sup>, Class (East), Islamabad, whereby the right to submit written statement of the appellant has been closed.

2. Learned counsel for the appellant contends that the respondent had filed a suit for declaration, specific performance, cancellation/withdrawal of mutation, mandatory and permanent injunction and appellant put his appearance before the learned Trial Court after service of summons, however, other respondents have not been served, which resulted into delay of the proceedings, finally suit was transferred to the Court of Ms. Ayesha Shabbir, Civil Judge, 1<sup>st</sup> Class (East), Islamabad, who has not issued any specific notice to the appellant for submission of written statement and as such valid opportunity has not been granted to the appellant nor even warning has been issued. It was next contended that right to fair trial is inalienable

right of the appellant, which has been denied by the learned Trial Court without adhering to the principles as well as fundamental guarantees embodied in the Constitution of Islamic Republic of Pakistan, 1973.

3. Conversely, learned counsel for the respondents contends that the appellant has been awarded with five (05) opportunities for filing of written statement in the span of seven (07) months w.e.f 24.07.2017 to 19.01.2018, but the appellant failed to submit the written statement, despite clear warning of the Court, cost of Rs. 1,000/- has also been imposed upon the appellant.

4. Arguments heard, record perused.

5. From the perusal of record, it reveals that suit titled **“Central Board of Revenue (CBR) Employees Cooperative Housing Society, Islamabad etc Vs. Malik Hasrat Hussain and others”** has been filed before learned Civil Court (East), Islamabad and after service of notice, the appellant put his appearance before the Court, but due to engagement of the learned counsel for the appellant on 04.07.2017, the appellant has been proceeded against ex-parte and appellant has filed application for setting-aside ex-parte proceedings, which was allowed vide order dated 24.07.2017 subject to payment of cost of Rs. 1,000/- on the conceding statement of plaintiff's counsel/respondent. The matter was adjourned to 31.07.2017, 13.09.2017, 03.10.2017, 03.10.2017, 22.11.2017, but appellant had failed to submit written statement and finally learned Transferee Court vide order dated 21.12.2017 has given **“absolute last opportunity to the defendant No.1/respondent to file his written statement subject to payment of cost of rupees 1000/-”** and has also given notice under Order VIII, Rule 1 CPC and matter was adjourned to 19.01.2018, on 19.01.2018, the appellant has failed to submit written statement, despite clear warning on the previous date of hearing, resultantly, the impugned order was passed and right to defence of the appellant has been closed.

6. The above referred *resume* of the facts spells out that appellant has been given numerous opportunities in period of eight (08) months, but lethargic casual conduct of the appellant is visible on record, even no valid justification has been brought on record by the appellant as to how and under what circumstances, he is entitled to claim the setting-aside of the impugned order.

7. Besides the above referred position, I have confronted the learned counsel for the appellant regarding maintainability of instant appeal, whereby he has failed to give any legal justification, especially when learned Civil Court has not passed the final judgment while passing the impugned order coupled with the fact that when right to defence of the appellant has been closed in terms of Order VIII Rule 1 CPC, the said order is appealable in terms of Order XLIII Rule 1(b)(c), if the final judgment has been passed against the party, however, in this case, no final judgment has been passed, therefore, revision U/s 115 CPC shall lie in given circumstances. However, the appellant has not preferred revision rather filed the appeal, which is apparently barred by time, although C.M No. 02/2018 has been filed alongwith instant appeal for condonation of delay, but the same could not be considered valid, especially when the remedy exercised by the appellant itself is illegal and not available under the law.

8. I have also gone through the concept that even an appeal could be treated as civil revision, however, time period exhausted by the appellant is beyond 90 days and in such circumstances, proceedings could not be converted, similarly, the 30 days period from the date of first hearing in terms of Order VIII Rule 1 CPC has not been adhered to by the appellant, despite the fact that he has given last opportunity to file the written statement, but he has failed to submit the same, in such eventuality, the wisdom referred in reported judgment **2005 CLC 506 [Lahore] (Rafaqat Ali Vs. Muhammad Bashir Khan and another)**,

2005 CLC 1422 [Peshawar] (Allah Bakhsh Vs. Additional District Judge-I, D.I.Khan and 2 others.), 2006 CLC 1473 [Lahore] (Secretary Agriculture, Government of the Punjab, Lahore and 4 others Vs. Messrs Muhammad Abbas & Sons), 2018 MLD 581 [Lahore] (Lahore Development Authority Vs. Ch. Asghar Ali Bhuta and others), 2009 YLR 1729 [Lahore] (Majeed Ahmed Khan Vs. Addl. District Judge, Faisalabad and others), 2009 MLD 239 [Lahore] (Malik Muzahir Hussain Vs. Tesneem Ahsan and 2 others)

has been considered and appellant has failed to wriggle out from his own mistake on the basis of principles laid down in the above referred case laws.

9. As a result of above discussion, instant appeal is misconceived and same is hereby **dismissed.**

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

Ramzan