

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 251/2013.

Dr. A. Q. Khan Research Laboratories

Versus

Sohail Ashraf & another

Petitioner by: Barrister Iqbal Nasar, Advocate.

Respondents by: Nemo.

Date of Decision: 27.07.2020.

MOHSIN AKHTAR KAYANI, J:- Through this Civil Revision, the petitioner has assailed the order dated 14.07.2011, passed by learned Civil Judge 1st Class, Islamabad, whereby plaint filed by petitioner was rejected U/O VII Rule 11 CPC and the said order was maintained by the learned Appellate Court vide judgment & decree dated 30.04.2013, passed by learned Additional District Judge (West), Islamabad.

2. Brief facts referred in the instant civil revision are that petitioner organization filed suit for recovery against respondent No.1 Sohail Ashraf ex-employee and respondent No.2/surety of respondent No.1 on the ground that respondent No.1 availed Ex-Pakistan Leave to attend Scholarship Program from foreign university on the basis of study leave w.e.f. 01.07.2004 to 28.01.2006, whereas during said period respondent No.1 received salary, house rent, other allowances and honorarium amounting to Rs.3,04,452/-. Respondent No.1 while taking leave submitted surety bond through respondent No.2 in favour of petitioner organization to serve the same at least for a period of five years after successful completion of master degree but the same was not complied with and

respondent No.1 has not turned up. Resultantly he has been proceeded *ex-parte* and his service has been terminated. Respondent No.1 has also applied for extension in study period abroad, which was allowed subject to provision of certain documents but the same were not provided and respondent was declared absent from duty and terminated after adopting complete procedure vide order dated 01.01.2008. The plaint filed by the petitioner against the respondents has been rejected in terms of order VII Rule 11 CPC by the trial Court, which was maintained and upheld by the Appellate Court. Hence, instant civil revision.

3. Learned counsel for the petitioner contends that trial Court has not considered the law in its true perspective, even basic findings given by the trial Court referred in para-5 is against record as respondent No.1 was not granted any scholarship on behalf of department rather he was only given Ex-Pakistan leave for completion of his course work and study where-after he was under obligation to serve the department for 05 years as such the terms of surety bond have not been adhered to but this aspect has not been considered rather contrary view has been taken and plaint was rejected despite that there is a scope to verify the facts narrated in the plaint; that plaint was rejected on the basis of disputed facts, which require recording of evidence.

4. Notices were issued to the respondents but despite hectic efforts notices could not be served and alternate mode of service through publication in daily Pakistan has been adopted but even then no one turned up and finally respondents have been proceeded *ex-parte* vide order dated 26.02.2020.

5. Arguments heard, record perused.

6. Perusal of record reveals that respondent No.1 being ex-employee of petitioner organization performed his duties as Assistant Engineer w.e.f. 16.11.1991 and later on he was selected for Master in Industrial Engineering under French Scholarship Programme in the university of Valenciennes France, he

was granted study leave abroad w.e.f. 01.07.2004 to 28.01.2006. However, study leave was subject to execution of surety bond with certain conditions to be observed. Respondent No.1 in compliance of order of petitioner organization submitted surety bond through respondent No.2 in petitioner organization dated 28.07.2004 with the following five conditions:-

1. *Whereas on his request the KRL has selected the scholar for MS-Studies in the field of Industrial Engineering.*
2. *The scholar shall not change the specialized course of studies nor register himself for any other course of program without prior approval of competent Authority.*
3. *The Scholar shall not under take employment whether paid or otherwise during the course of studies.*
4. *The Scholar shall serve at least for a period of five year after the completion of approved course for which he was selected.*
5. *The Scholar shall inform KRL immediately the date of completing studies.*

7. Respondent No.1 later on got admission in university of U.K and went to attend the study programme and not returned rather applied for extension, whereby petitioner department asked respondent No.1 to provide certain documents including course of study, progress report and university schedule but the same were not provided and finally extension in study period abroad was regretted on 19.12.2006 and respondent No.1 was directed to report back within 20 days but respondent No.1 has failed to comply with the direction and he was informed through letter dated 20.03.2007 that a disciplinary action will be taken against him but in vain. Respondent No.1 has been declared absent from duty and legal notice dated 18.12.2007 was issued including details of pay & allowance paid to respondent No.1 and finally respondent No.1 was terminated after issuing him show cause notice on 01.01.2008. The petitioner organization filed suit for recovery for the amount so spent upon respondent No.1 during the period of study whereby respondent No.1 has received pay & allowances as well as house rent and total amount claimed by the petitioner department is Rs.3,04,452/- with profit @ 8% per annum alongwith cost of suit. However,

respondent No.1 contested the suit by filing written statement, whereby trial Court rejected the plaint with following observations:-

The applicant/defendant No.2 has prayed for dismissal of the suit on the simple ground of lack of cause of action in favour of the plaintiff. His contention is that this suit is filed against his surety bond, which he had executed for his scholarship program in France, but he was neither given a scholarship nor he ever went to France for his studies rather he traveled to U.K for his higher studies on his personal expenses. The contents of surety bond are also minutely perused by me which reveal that in fact the surety bond was executed by respondent No.2 against expenses incurred to defendant No.1 in respect of his study and training at abroad against his scholarship provided by plaintiff's department. Documents provided by both parties reveal that defendant No.1 was only granted study leave abroad and there was no scholarship ever accorded to him, therefore, suit filed on the basis of surety bond against scholarship is not maintainable in my view. If plaintiff wants to file any recovery suit for its reimbursement against usually paid emolument to defendant No.1 during studies leave, t may file a recovery suit, but suit on the basis of surety bond is not maintainable. It is settled principle of prudence that suit prima-facie non maintainable suit must be banished at its inception, therefore, application U/O 7 Rule 11 CPC is accepted and plaint is rejected.

8. The petitioner organization filed appeal U/S 96 CPC, which was also dismissed by the learned Appellate Court vide judgment & decree dated 30.04.2013.

9. Both the Courts below have considered the facts narrated in the plaint and drawn a conclusion that the petitioner organization has wrongly referred the country as France instead of U.K and even no monetary benefits were extended by the petitioner organization and as such recovery is not justiciable. This aspect if seen in juxtaposition with the plaint and record appended with civil revision reveals that it is not the case of petitioner organization that they have spent some amount on foreign education rather entire case is based upon pay & allowances spent by respondent No.1 during his study leave period and as such terms of

surety bond clearly spells out that "respondent No.1/scholar shall serve at least for a period of five years after the completion of approved course for which he was selected" but said term of surety bond though not give any detail of the country and amount spent but respondent No.1 remained beneficiary during leave period and has not returned to serve his country as well as organization.

10. All these factors have not been considered by the trial Court as well as Appellate Court. It is trite law that only those complaints could be rejected in terms of Order VII Rule 11 CPC whereby no cause of action was disclosed or the same was barred by law or requisite Court fee was not appended, whereas no such ingredient has been discussed by the trial Court and the Appellate Court, even facts referred require determination through evidence and disputed facts were adjudicated on the basis of assumption, hence, order dated 14.07.2011, passed by learned trial Court as well as judgment & decree dated 30.04.2013, passed by learned Appellate Court are not legally sustainable, which are based upon illegal exercise of jurisdiction not vested in the Court, therefore, powers conferred upon this Court U/S 115 CPC are supervisory in nature to settle the proposition in question only by way of remand as the disputed facts could only be settled through recording of evidence.

11. In view of above position, instant civil revision is allowed. Resultantly, order dated 14.07.2011, passed by learned trial Court as well as judgment & decree dated 30.04.2013, passed by learned Appellate Court are hereby set aside and matter is remanded to the learned trial Court to frame issues and record evidence in accordance with law and conclude the matter within period of six months under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE