

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

**C.R. No.193/2019**

Iqra Mubarik

*versus*

Federal Board of Intermediate and Secondary Education & another

Petitioner by: Mr. Abdul Sattar Chaudhry, Advocate.

Respondent No.1 by: Mr. Mir Afzal Malik, Advocate.

Date of Hearing: 03.12.2019.

**MOHSIN AKHTAR KAYANI, J:** Through this civil revision petition, the petitioner has assailed the judgment & decree dated 04.03.2019, passed by learned District Judge Islamabad (West), whereby judgment & decree dated 27.10.2018 passed by learned Civil Judge 1<sup>st</sup> Class (West), Islamabad in favour of the petitioner have been set-aside.

2. Brief facts referred in the instant civil revision petition are that the petitioner Iqra Mubarik and her father Mubarik Ali filed a suit for declaration with mandatory injunction to the effect that date of birth recorded by the petitioner in the record of Federal Board of Intermediate and Secondary Education, Islamabad ("**FBISE**") be corrected and rectified as per Form-B issued by NADRA and judgment passed by Civil Judge 1<sup>st</sup> Class, Lahore, dated 12.11.2014. Learned Trial Court framed the issues, recorded evidence and after hearing learned counsel for the parties, decreed the suit in favour of the petitioner vide judgment and decree dated 27.10.2018. However, FBISE/respondent assailed the said judgment and decree before the learned District Judge, Islamabad in appeal, which was allowed in favour of the respondents vide impugned judgment and decree dated 04.03.2019 and the judgment and decree of the Trial Court was set aside. Hence, the instant civil revision petition.

3. Learned counsel for the petitioner contends that the petitioner filed a suit for declaration and mandatory injunction against Federal Board of Intermediate and Secondary Education, Islamabad/respondent before Civil Court, Islamabad for

correction of her date of birth, which was wrongly incorporated as 15.01.1996 in column No.15 of the Form/record of Federal Board of Intermediate and Secondary Education, Islamabad instead of 15.01.1998; that after recording of evidence, learned trial Court passed the judgment & decree in favour of the petitioner, which was assailed by respondent side before the first appellate Court in appeal, which was allowed and judgment & decree of the learned trial Court was set aside; that learned first Appellate Court has not appreciated the law on the subject, allowed the appeal and dismissed the suit of the petitioner without adhering to legal principles.

4. Conversely, learned counsel for the respondent/Federal Board of Intermediate and Secondary Education, Islamabad contends that the petitioner and her sister initially filed a suit for declaration before Civil Court at Lahore for correction of their date of birth in NADRA record as per birth certificates issued by the Secretary Union Council Naurang Abad (047) Narowal, instead of Form-B issued by Incharge NADRA, Registration Centre, Zarar Shaheed Road, Lahore, which was decreed in their favour and subsequently the petitioner filed suit before Civil Court Islamabad seeking amendment and rectification in her date of birth, which is barred by Section 11 CPC read with Order II Rule 2 CPC; that no document has been brought on record to substantiate plea of the petitioner qua date of birth, even no record was produced during the course of trial.

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that Iqra Mubarik/petitioner has applied for correction of her date of birth in the certificate issued by FBISE, Islamabad, wherein her date of birth has been mentioned as 15.01.1996, while the petitioner claims the correct date of birth as 15.01.1998, regarding which the petitioner has filed a suit for declaration with mandatory injunction against the FBISE. The learned Civil Judge 1<sup>st</sup> Class (West), Islamabad after receiving written statement from the respondent side framed the issues on 23.05.2017 and decreed the suit vide judgment and decree dated 27.10.2018. The FBISE feeling aggrieved thereof challenged the said judgment and decree in appeal, which was

allowed by the learned District Judge (West), Islamabad vide impugned judgment and decree dated 04.03.2019 and the suit filed by the petitioner stood dismissed.

7. I have gone through the findings of the learned Trial Court as well as of the learned first Appellate Court and observed that the primary question has been settled through Issue No.1 i.e.,

*Whether the plaintiff is entitled to decree for declaration with mandatory injunction as prayed for? OPP*

8. The above referred issue clearly spells out that the onus to prove the case is upon the petitioner, who has been represented through her real father i.e. Mubarak Ali as PW-1, who has produced B-Form (Exh.P3), issued by NADRA on 06.07.2015, which shows the date of birth of the petitioner as 15.01.1998 having registration No.34502-7573968-8. Similarly, PW-1 Mubarak Ali has also produced the birth certificate issued by the Government of Punjab through Secretary Union Council Naurang Abad (047), District Narowal on 22.04.2014, however the date of entry in the said record regarding date of birth of the petitioner has been referred as 24.01.1999 as (نارمل اندراج) by her father. Hence, the said two documents clearly spell out the correct date of birth of the petitioner as 15.01.1998, that has been registered on 24.01.1998 i.e. after one year of her birth and as such, the public record contains the presumption of truth in view of Articles 85 & 92 of the Qanun-e-Shahadat Order, 1984, wherein public documents cannot be ignored, especially when the document relates to a public record issued by a public authority in accordance with law after preparation of process provided under a statute, it always carry a sanctity therewith and strong evidence is required to cast aspersion on genuineness thereof. Reliance is placed upon 2016 YLR 671 Karachi (Chaudhary Manzoor Ahmad vs. Faisal Manzoor).

9. The petitioner has also produced the Secondary School Certificate, Examination Annual 2014, vide Roll No.152447, referred as Exh.P6, in which her date of birth is recorded as 15.01.1996, which has been challenged in the civil suit.

10. The FBISE, on the other hand, has produced their witness of record along with Form No.104366 (Exh.D2), which was filled by the petitioner and countersigned by her

real father Mubarak Ali. Perusal of the said Exh.D2 shows that the petitioner's date of birth is 15.01.1996 as referred in Column No.15 and as such, the FBISE contended that the petitioner and her father after verifying the entries themselves have signed the document with their free will.

11. This Court while taking into consideration the entire evidence/record is of the view that an error could be made inadvertently, however element of malafide in entry by a person himself or other extraneous consideration has not been attributed in this regard. In normal course of life, the possibility of mistake could not be ruled out while executing different application forms and in this case, it seems that the bona fide mistake was committed at the time of execution of form Exh.D2 when the petitioner intended to appear in the FBISE.

12. Furthermore, the petitioner has passed her examination of secondary school in December, 2014 and she filed the suit on 02.03.2017 i.e. within three (03) years, for correction of the mistake and as such, the petitioner is neither employed in any Government department nor she will get any other benefit of service or retirement for extension of her job, which are the main considerations for change of her date of birth.

13. The birth certificate Exh.P3 and B-Form Exh.D2 have been recorded and registered in normal course of events within the reasonable time and no manipulation has been observed, even otherwise, sanctity is attached with the public record. The respondent side, however, has heavily relied upon 2014 MLD 1411 Peshawar (Mst. Shahida vs. NADRA) and 2001 CLC 972 Peshawar (Saima Iltaf vs. Principal, Junior Burn Hall Girls College, Abottabad) to justify that the date of birth could not be rectified or changed unless the relevant register having the entry of the date of birth is produced.

14. On the other hand, in contest to the aforesaid contention of the FBISE, the learned counsel for petitioner argued that the document of birth certificate issued by the Government of Punjab is a public document and the same could not be discarded simply for the reason that the relevant register having mention of the date of birth has not been produced as it is not the case of FBISE that the date of birth claimed by the

petitioner i.e. 15.01.1998 is not recorded in the birth register, therefore, while relying upon Articles 85 and 92 of the Qanun-e-Shahadat Order, 1984, the presumption to the public record is to prevail in such circumstances.

15. Similarly, I have gone through the findings of the learned first Appellate Court elucidated in the impugned judgment, specifically in Para-9, and observed that the appeal filed by the respondent side has been allowed mainly on the ground that original document was not produced. For ready reference, Para-9 of the impugned judgment is reproduced as under:

*“9. The next document which was most probably produced as Ex-P6 or P7 is only the document which could be said to be in support of respondents but to the extent of Iqra Mubarik which is a birth certificate and shown to have been issued from Union Council Naurangabad (047), district Narowal which indicates that birth of Iqra Mubarik was reported on 24.01.1999. This was a photocopy so it could not be taken into consideration by learned trial Court unless original record had to be brought before the Court.”*

16. The above referred view taken by the learned District Judge has been verified from the record along with the evidence of PW-1 Mubarak Ali, who has produced one copy of B-Form (Exh.P3), birth certificates of both daughters (Exh.P4 & Exh.P5), copies of SSC of both daughters (Exh.P6 & Exh.P7) and, at last, it was specifically written, “اصل دستاویزات بعد ملاحظہ واپس شد”. The said exercise of returning the documents after its perusal manifests that the learned Trial Court had seen the original primary documents in terms of the Qanun-e-Shahadat Order, 1984, whereafter copies of the same were received and exhibited by the learned Trial Court in the judgment as well as in the record. Even otherwise, when the documents of birth certificate and B-Form were produced and exhibited in the learned Trial Court by the petitioner, no objection has been taken by the FBISE, therefore, in terms of Article 72 of the Qanun-e-Shahadat Order, 1984 read with Order XIII Rule 1(3) of the CPC, hence no objection has been raised by the defendant side regarding admissibility and proof of such documents, therefore, such documents would validly become part of plaintiff's evidence and defendant shall be considered to have waived his right to resist the mechanism of the proof thereof. Reliance is placed upon 2015 SCMR 21 (Muhammad Iqbal vs. Mehboob Alam).

17. The above referred state of affairs persuade this Court to hold that findings of the learned District Judge expounded in the impugned judgment and decree are contrary to record, who fell in error while rejecting the exhibited documents, therefore, it is a fit case to rectify the illegal exercise of jurisdiction by the Appellate Court in terms of Section 115 of the CPC by this Court, hence, the findings recorded by the learned first Appellate Court in Para-9 of the impugned judgment and decree, whereby the petitioner has been non-suited with the observations that original record has to be brought, are incorrect as the public record attains the sanctity and it could only be rebutted by producing the contrary evidence, while in this case the FBISE has not brought any contrary evidence on record through which the findings given by the learned District Judge could be maintained. Similarly, the document in question i.e. Form-B (Exh.P3) is a public document, to which presumption of truth is attached and it could not be ignored in the light of principles highlighted in 2003 SCMR 501 (Mst. Nur Begum vs. Settlement and Rehabilitation Commissioner, Multan), PLD 2005 SC 962 (Abdul Khaliq vs. Maulvi Muhammad Noor) and 1992 SCMR 1362 (Khan Bahadur vs. Ahmed Khan).

18. In view of above discussion, the instant civil revision is hereby ALLOWED, the impugned judgment and decree dated 04.03.2019 of the learned District Judge (West), Islamabad are SET ASIDE and the judgment and decree dated 27.10.2018 of the learned Civil Judge 1<sup>st</sup> Class (West), Islamabad are hereby RESTORED.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: 12.12.2019.

JUDGE