

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**Civil Revision No. 90/2017**

**Baber Hussain Butt**

**Vs**

**Naheed Sana**

**Petitioner by:           Sardar M. Haroon Sami, Advocate.**

**Respondent by:       Mr. Amanullah Kiani, Advocate**

**Date of Hearing:       25.02.2020.**

**FIAZ AHMAD ANJUM JANDRAN, J.-** Through the instant civil revision petition, petitioner has challenged the following five orders:-

- (i) **Order dated 11.01.2010,** whereby the learned trial court appointed local commission for recording of evidence of the parties,
- (ii) **Order dated 18.03.2010,** whereby petitioner was proceeded against ex-parte,
- (iii) **Order dated 18.05.2010,** whereby ex-parte judgment and decree was passed,
- (iv) **Order dated 23.02.2016** whereby application for setting aside of ex parte orders and ex-parte judgment and decree was dismissed; &
- (v) **Order dated 14.10.2016** passed by learned ADJ-IV Islamabad-West whereby appeal filed by the petitioner was dismissed.

2. Precisely, facts relevant for disposal of instant civil revision petition are that on 5.9.2005 respondent Naheed Sana (since died) had filed a suit for recovery of Rs.450,000/- against the petitioner. After submission of written statement and framing of issues, learned Trial Court appointed local commission for recording of evidence vide order dated 11.1.2010. Thereafter, petitioner absented himself and was proceeded against

ex-parte vide order dated 18.3.2010. The learned Trial Court after recording evidence, decreed the suit vide ex-parte Judgment & Decree dated 18.5.2010. Against the said proceedings, petitioner had filed an application under Order IX, Rule 13 CPC which was dismissed by the learned Trial Court vide order dated 23.2.2016. The petitioner, then filed an appeal which met the same fate vide order dated 14.10.2016, hence the instant civil revision petition.

3. Learned counsel for the petitioner contends that material irregularity has been committed by the Courts below by ignoring the fact that petitioner remained vigilant for pursuing the cause before trial Court; that without considering material available on record had passed the impugned judgment and decree; that the learned Trial Court appointed local commission for recording of evidence without consent of the petitioner or his counsel as their signatures were not obtained on the margin of the order sheet; that his application under Order IX, Rule 13 CPC was well within time and that law favours adjudication of cases on merits rather to knockout the parties on technical ground, therefore, impugned orders are liable to be set aside.

4. On the other hand learned counsel for respondents states that law favour vigilant and not the indolent; that petitioner from the beginning tried to linger on the valuable rights of respondent; that respondent in her life time filed a suit for recovery of her hard earned money by way of monthly committees, which were usurped by the petitioner and she could not get fruits of that suit in her life time and now her legal heirs are hoping for the same. Learned counsel supported the judgments of two courts below and requested for rejection of instant civil revision petition.

5. Heard the learned counsel for the parties and perused the record with their able assistance.

6. Record appended with the instant civil revision petition shows that respondent had filed a suit for recovery of Rs.450,000/- which she had paid to the petitioner by way of nine memberships of monthly committee of Rs.9000/- but when time came to receive benefit of the same, petitioner disappeared from the scene and thereafter started new business in F-8 Markaz, Islamabad while previously he was doing business in F-6 i.e. Super Market. In response to notice, petitioner appeared and filed written statement and thereafter disappeared and ex-parte evidence was recorded. Finally suit of the respondent was decreed vide ex-parte judgment and decree dated 18.05.2010. Thereafter on 16.2.2013 after lapse of more than two and a half year he filed application for setting aside the judgment and decree without any plausible and justifiable reason. The record shows that the dates which petitioner alleges were not in his knowledge, was duly represented by his counsel, therefore, he cannot speak against the record and, in particular, against the judicial record. Besides that, petition for setting aside ex-parte judgment and decree filed by the petitioner was hopelessly time barred, therefore, learned trial Court came to a conclusion in accordance with law and dismissed the application.

7. The learned Appellate Court also came to the correct conclusion that absence of the petitioner qua proceedings of trial Court was intentional and an attempt to linger on the genuine claim of respondent. No jurisdictional defect has been pointed out in the impugned order while there is no question of material irregularity warranting interference by this Court. The concurrent findings are not liable to be interfered with, particularly when nothing towards misreading or non reading of the

evidence has been pointed out. In this respect I am guided by the law laid down by the Hon'ble Supreme Court of Pakistan in case law reported as "*Mst. Zaitoon Begum Vs Nazar Hussain and another* (2014 SCMR 1469)" wherein it is held as under:-

**"20. Even otherwise, this Court in the case of Kanwal Nain v. Fateh Khan (PLD 1983 SC 53) has held that concurrent findings of two Courts below are not open to interference in limited revisional jurisdiction of the High Court, albeit, it may be, to some extent, erroneous on point of fact and on point of law, both."**

In this respect, there are other case laws by the Hon'ble Peshawar High Court reported as 2019 YLR 1523 (Peshawar) & 2019 CLC 1710 (Peshawar). Consequently, the revision petition being devoid of merits is dismissed.

**(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE**

Suhail

Announced in open Court on 11 /03/2020:

**JUDGE**