

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Civil Revision No. 130/2017

Muhammad Masood Sabir

Versus

Muhammad Aziz and another

Date of Hearing : 11.08.2020.
Petitioner by : Syed Abaid Ullah Shah, Advocate.
Respondent by : Ch. Abdul Khaliq Thind, Advocate.

FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant Civil Revision Petition, petitioner assails order dated 13.03.2017 passed by the learned Additional District Judge, Islamabad (West), whereby his application for leave to appear and defend the suit (*"the application"*) was accepted.

2. Facts, relevant for the disposal of the instant Civil Revision Petition are that respondent No.1 filed a suit under Order XXXVII of the Code of Civil Procedure (*"CPC"*) for recovery of Rs.5,50,000/- alongwith markup against the petitioner. In response to notice, petitioner filed the application, which was allowed vide order dated 13.03.2017, being assailed through the instant Civil Revision Petition.

3. The learned counsel for petitioner contends that suit of the respondent No.1 was time barred and the petitioner in the application has specifically taken the said ground and therefore, the question of maintainability was required to be decided at the first instance but the learned Trial Court omitted to decide the same at the inception; that the contents of the plaint negates the version of respondent No.1 as he admitted the receipt of Rs.200,000/- out of the cheque amount and the claim in

terms of Order XXXVII of the CPC was not maintainable, therefore, impugned order is liable to be set aside. Learned counsel placed reliance upon case laws reported as 2009 CLC 858, 2007 MLD 1, and 2020 CLC Note 12.

4. On the other hand, learned counsel for respondent No.1 argued that the petitioner was afforded opportunity to appear and defend the suit; that the question being pressed can be raised before the learned Trial court and that the instant revision petition is an attempt to delay the proceedings, therefore, deserves outright dismissal.

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

6. Record reveals that the petitioner filed application with following prayer:-

"Under the circumstances, it is, therefore, respectfully prayed that the applicant/defendant be granted unconditional leave to appear and defend the suit in the best interest of justice."

7. The application *ibid* was allowed vide impugned order dated 13.03.2017 in following terms:-

Perusal of record discloses such facts as would make it incumbent on holder to prove consideration. While deciding the application for leave to appear and defend the suit, the Court cannot go into the merits of the case to determine if the defense is good or true. The application in question shows substantial question of law needing trial and the defense leading trial. Furthermore, the learned counsel for the plaintiff has no objection on grant of instant application for leave to defend the suit, therefore, the instant petition is accepted subject to furnishing of surety bond in the sum of Rs.750,000/- with one local surety in the like amount to the satisfaction of this Court. Now to come up for filing of written statement as well as submission of surety bond on 20.03.2017."

8. It is quite strange that the petitioner opted to challenge the order, made in his favour and that too

subject to furnishing of surety bond and not subject to deposit of the suit amount. The submission of the learned counsel for the petitioner regarding the suit being time barred, has not been mentioned in the prayer clause of the application reproduced above and appears to have been innovated first time through the instant Petition. It is the prerogative of the learned Trial Court to decide the question of maintainability where the petitioner has been afforded right to appear and defend the suit. Even otherwise, the question of limitation being mixed question of law and facts cannot be decided without recording of evidence.

10. The law is very much expressed on the point that the things should be done in the manner in which law requires to be done and not otherwise. The order impugned was passed in favour of the petitioner, whereby he was provided opportunity of due contest, therefore, it cannot be said that the order impugned suffers from any illegality, material irregularity or jurisdictional defect.

11. The case law **"Kabir Muhammad (deceased) through LRs V. Allah Bakhsh (deceased) through LRs and others" (2020 CLC Note 12)** deals with the proceedings in the suit for declaration under Section 42 of the Specific Relief Act, 1877; the second case law **"Abid Hussain V. Abdul Abbas" (2007 MLD 1)** also entails distinct proposition wherein leave was granted, issue was framed regarding the matter being time barred and ultimately that issue was decided by the learned Trial Court after recording of evidence. The citation **"Rana Muhammad Hashim V. Haji Shafaat Ahmad" (2009 CLC 858)** entails the proceedings of a summary suit which were assailed after final conclusion in a Regular First Appeal, therefore, the case law relied upon by the learned Counsel entails altogether distinct facts and proposition therefore, do not extend any help to the petitioner as in the case at hand,

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petitioner opted to assail an interim order and that too whereby he was afforded opportunity to appear and defend the suit.

12. In view of above, no interference is warranted in the impugned order. The instant civil revision petition is misconceived and accordingly **dismissed**.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

A.R.Ansari

Announced in open Court :- 04-09-.2020.

JUDGE