

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

W.P No.3544/2019.

Haseeb Haider Vs. Ch. Naseer Ahmed etc.

Petitioner by: Mr. Muhammad Shahzad Siddique,
Advocate.

Respondent No.1 by: Mr. Shehryar Tariq, Advocate.

Date of Decision: 13.01.2020.

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioner has assailed the order dated 31.07.2019, passed by learned Civil Judge, Islamabad (West) and order dated 24.09.2019, passed by Additional District Judge-West, Islamabad, whereby application for restoration of possession of Espresso Lounge Café/Restaurant in Leisure Club, Silver Oaks Apartment, F-10, Islamabad and its items has been dismissed.

2. Learned counsel for the petitioner contends that the petitioner entered into partnership with respondent No.1 regarding running of Espresso Lounge Café/Restaurant in Leisure Club, Silver Oaks Apartment, F-10, Islamabad; that suit for permanent injunction was filed by the petitioner and restraining order was obtained from learned Civil Court on 01.04.2019, however, respondent No.1 disconnected the utility facilities and also restrained the customers from entering into the restaurant, upon which an application U/S 94/151 CPC for protection of the legal rights was filed; that Bailiff was appointed, who visited the place in dispute and notified the orders of Civil Court, however, on 03.06.2019, the petitioner was dispossessed from the premises and his furniture and other articles were seized by respondent No.1; that the application for restoration of possession as well as the items of the restaurant was filed, which was dismissed by Civil Court without adopting due procedure required under the law for resolution of factual dispute; that the matter is sub-judice before learned Trial Court as such respondent No.1 has also filed a suit, which has been clubbed with suit of the petitioner.

3. Conversely, learned counsel for respondent No.1 has opposed instant writ petition and contends that the petitioner is under obligation to pay the dues, utility bills and other charges and as such all these questions have not yet been determined due to which furniture and other items were kept by respondent No.1 and possession is with him; that Civil Court has not yet given any findings, which require recording of evidence for adjudication of the matter; that both the Courts below have appreciated conduct of the petitioner and dismissed the application for restoration of possession in proper manner.

4. I have heard the arguments and gone through the record.

5. Perusal of the record reveals that the petitioner and respondent No.1 entered into partnership agreement dated 15.03.2014 for joint business in the name of Espresso Lounge Café/Restaurant was established in Leisure Club, Silver Oaks Apartment, F-10, Islamabad, however, due to dispute, the petitioner filed suit for permanent injunction against respondent No.1 and obtained restraining order dated 01.04.2019 qua the restaurant in question. Notices were issued to respondent No.1, who put appearance before learned Trial Court on 15.04.2019 and the matter was adjourned to 14.05.2019, on which date written statement was filed, however, utility facilities connections were disconnected, upon which application was filed in terms of section 94 read with section 151 CPC, whereupon learned Trial Court appointed Bailiff to ensure compliance of the order regarding restoration of utility facilities. The Bailiff informed respondent No.1 as well as management of Silver Oaks and report to that effect is available on record. During the said process, the petitioner was dispossessed from the said premises and his furniture and other articles of the restaurant were retained by respondent No.1, who separately filed suit for declaration, permanent and mandatory injunctions, rendition of accounts and recovery, which is also pending before competent Civil Court, however, the petitioner approached learned Trial Court for restoration of possession of the premises in question, whereby learned Trial Court has passed the impugned order in the following manner:-

“5. Record reveals that initially, a suit for permanent injunction titled “Haseeb Haider Vs Naseer Ahmed” was filed on 01.04.2019 which was entrusted to this court wherein the plaintiff asserted his possession over the suit café. This court granted the ad interim injunction as under:-

“the respondent/defendant is restrained from interfering into business of the applicant/plaintiff without any lawful justification and without adopting due course of law”.

6. Another suit for declaration, permanent and mandatory injunction titled “Naseer Ahmad Vs Haseeb Haider” was filed on 10.06.2019 and was entrusted to the court of Mr. Shoukat Rahman, Civil Judge-West, Islamabad wherein the plaintiff asserted his possession over the suit café. The court granted the ad interim injunction as under:-

“the defendant/respondent is restrained to dispossess the plaintiff/petitioner without due course of law”.

7. Second suit is also transferred to this court on 03.07.2019. Both the suits are counter claims in which both the parties have got issued injunctive orders in their respective favors claiming their respective possession over the suit café. Both the suits are pending adjudication before this court for 12.09.2019 for arguments on application under O 39 R 1 & 2 CPC and O 7 R 11 CPC.

8. Keeping in view the above, the instant application is premature and without deciding the applications under O 39 R 1 & 2 CPC in both the suits, the decision on merit of the instant application shall affect the injunctive orders granted in both the suits; therefore, the instant application is dismissed being premature. Record of this application be attached with the main file.”

6. The impugned order dated 31.07.2019 was further assailed in civil revision before learned Additional District Judge, who dismissed the civil revision vide order dated 24.09.2019. I have confronted learned counsel for the parties to highlight all those factors and reasons, which prevail in order of learned Trial Court, however, they candidly conceded that impugned order dated 31.07.2019 has been passed without referring to any reason rather bare reading of the order reflects that learned Trial Court has ignored the basic principles of law, which requires adjudication of the matter with reasons and as such impugned order dated 31.07.2019 on the application for restoration of possession is non-speaking order.

7. I have again gone through the conclusion part of the impugned order in para-8, whereby the only reason referred is pre-maturity of the application, which is incorrect view especially when dispute is as to whether the injunctive order passed by learned Trial Court was violated or otherwise, such issue can only be resolved by recording of evidence, which has not been done in present case. The learned Trial Court has not considered factual aspect in proper manner and passed the impugned order in mechanical manner without any reason and such conduct of learned Trial Court is highly depreciated. I have also gone through the impugned order passed by learned Additional District Judge

in civil revision, who has also ignored the minimum requirement for deciding such type of cases.

8. While considering the entire background, the matter has already been fixed for recording of evidence as per statement of learned counsel for respondent No.1, who is unable to defend the order dated 31.07.2019 passed by learned Trial Court, which is apparently without jurisdiction and in such type of scenario, this Court is equipped with the powers under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. There is no cavil to the proposition that impugned orders dated 31.07.2019 & 24.09.2019, passed by learned Trial Court and learned Revisional Court are without jurisdiction and nullity in the eyes of law.

9. In view of above discussion, the instant writ petition is allowed, impugned orders are set aside and the matter is remanded to learned Trial Court. The application for restoration of possession shall be deemed to be pending before learned Trial Court and learned Trial Court after recording of evidence shall decide the matter afresh.

10. Keeping in view approach adopted by learned Trial Court, it is appropriate that the matter may be heard by some other Court. Therefore, learned District Judge, Islamabad (West) is directed to transfer the pending suits titled "*Haseeb Haider vs. Ch. Naseer Ahmad*" and "*Ch. Naseer Ahmad vs. Haseeb Haider*" to any other Court. It is expected from the transferee Court that the suits including application for restoration of possession or disobedience of the Court orders shall be decided after recording of evidence through speaking orders in accordance with law within period of 03 months from the date of receipt of copy of this judgment under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

R. Anjam