

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 524 of 2020

Javeed Akhtar Baig

VS

District Judge (West), Islamabad, etc

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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03.03.2020.

**Malik Muhammad Zubair and Raja
Abdul Hafeez, Advocates for the
Petitioner.**

Notice issued by this Court has been served upon Respondent No.3 through Process Server on 28.02.2020, but he opted not to appear and defend the case, therefore, he is proceeded against ex-parte.

2. Through instant petition, Petitioner has assailed order dated 24.01.2020, passed by learned District Judge, Islamabad (West), as well as order dated 16.11.2019, passed by the learned Civil Judge, 1st Class, West-Islamabad, whereby, order passed by the learned Civil Judge was upheld and Petitioner's application for preparation of decree announced vide judgment dated 08.04.2019, in Civil Suit No. 178/2018, was rejected, respectively.

2. Facts of the case, as per memo, are that the petitioner was engaged by one Fazlay Bilal Khan/Respondent No.3 in his development project on contract basis and assigned the construction work i.e. aluminum glass, polishing, along with MS and labour charges. After completion of the assigned work, as per satisfaction of the

Respondent No.3, he claimed balance amount of Rs. 15,37,851/-,however, after being disappointed regarding recovery of the above amount compelled to file the above suit against Respondent No.3. During the entire trial, the defendant / Respondent No.3, remained absent from the proceedings. Thus, an ex-parte judgment was passed in favour of the Petitioner after taking into consideration the documentary evidence produced by the Petitioner during trial. After completing the trial proceedings, the learned judge concluded the judgment in the following words:

"the ex-parte evidence of the plaintiff fully support his version. Since there is nothing in rebuttal; therefore, ex-parte evidence recorded is deemed to be admitted. Relying upon the ex-parte evidence the suit of the plaintiff for recovery of Rs. 15,37,851/- along with mark-up at the prevailing market rate till the actual realization of the amount is decreed in favour of the plaintiff. No order as to cost. Decree sheet be prepared, subject to submission of Court fee within 30 days. File be consigned to the record room after its due completion."

3.. The Plaintiff after lapse of 222 days filed application on 16.11.2019, along with Court fee of Rs.3000/- for preparation of decree sheet as per judgment dated 08.04.2019. The learned Civil Judge, dismissed the application observing that:

"the applicant/plaintiff was specifically directed to deposit the Court fee within 30 days of the judgment passed on 08.04.2019, but the applicant remained failed to complied with the order of the Court and submitted the instant application after a period of 222 days of the passing of the judgment. This Court has become functus officio by virtue of its judgment dated 08.04.2019 after the expiry of 30 days. The jurisdiction of this Court was

available only within the stipulated period of 30 days and the moment this period was over, it ceased to have jurisdiction and became functus officio in view of the condition incorporated in the judgment. So the judgment dated 08.04.2019 has become redundant in the circumstances. In view thereof the instant application stands no merit and is dismissed in limine accordingly.

4. The Petitioner challenged the order dated 16.11.2019, through revision petition on 09.12.2019, before the learned District Judge Islamabad-West, who vide order dated 24.01.2020, dismissed the Civil Revision Petition in the following manner:

"petitioner has taken a plea that because of illness, he could not file requisite Court fee, however, there is nothing on record in this regard which could substantiate the contention of the petitioner. Even no application for condonation of delay was ever filed by the Petitioner in which he was supposed to explain delay of each and every day for not submitting the Court fee within stipulated period. He was directed to make up the deficiency in payment of Court fee, but he failed to do so within time, thus it was rightly held by the trial Court that the ex-parte judgment dated 08.04.2019, has become redundant. If the petitioner remains indolent and negligent in that behalf it was he who should be blamed. As such no case for interference is made out.

Feeling aggrieved, Petitioner has filed present writ Petition.

5. Learned counsel for the Petitioner while reiterating the stance taken before the learned District Judge-West, Islamabad submitted that due to illness of petitioner the directions for submission of Court fee contained in order dated 08.04.2019, could not be complied with, therefore, the reason for delay was genuine and beyond

petitioner's control. Learned counsel further submitted that the judgment is in favour of the Petitioner and the defendant throughout the trial opted not to contest the suit despite proper service of notices on him. Learned counsel contended that holding the judgment dated 08.04.2019, as redundant due to non-deposit of Court fee within the stipulated time is against the law and placed reliance on the judgment of Hon'ble Supreme Court passed in case titled "Akbar Ali and 4 others versus The Province of the Punjab and 2 others" reported as (1989 SCMR 1040), whereby the Hon'ble Apex Court allowed the appeal by setting aside the judgment of the High Court, and accepted the application under section 149 CPC and allowed 15 days time to deposit the deficient Court fee in the High Court.

6. Arguments of the learned counsel for the Petitioner has been heard and impugned orders dated 16.11.2019 and 24.01.2020, have also been perused along with judgment dated 08.04.2019.

6. Perusal of record transpired that the Petitioner was neither confronted regarding unpaid/deficient court fee at the time of institution of suit nor he was informed during the whole trial. But after he succeeded his case, he was knocked out on the pretext of deficient court fee without realizing that now as a result of favorable judgment, right to recover the amount of Rs. 1,537,851/- has been determined in favour of the Petitioner. The Hon'ble Supreme Court in the case re: **Siddique Khan & Others versus Abdul Sher Khan & Others** reported as (PLD 1894 SC 289) has held that:-

"the Court Fee Act like other fiscal statutes is to be construed strictly in favour of the subject; and that it was passed with the object of securing revenue for the benefit of the State and not to arm twist a litigant with a weapon of technicality to harass his opponent."

The Hon'ble Apex Court further observed that:-

"it (section 149) is a salutary provision which purports to save litigants from drastic effects of the fiscal statute, where emphasis is more on realization Government revenue than to punish them for honest mistake".

The Hon'ble Lahore High Court vide case titled **Mst. Rasheeda Bibi through Legal Heirs versus Amanullah Khan Bangash** reported as **(PLD 2016 Lhr 602)** has held that:-

"there is no manner of doubt that once a judgment is delivered and signed, there is no option left with the Court to draw decree in terms of the judgment. Drawing up decree cannot be postponed."

In another case titled **Abdul Khaliq versus Haq Nawaz** reported as **(PLD 2018 SC 7290)** Hon'ble Supreme Court it has observed that:-

"Assuming, he was directed to make the up the deficiency of such a paltry sum could not deprive him of his substantive right because the Court Fee Act being a fiscal statute has been enacted to collect revenue for State. It has not been enacted to arm a litigant with a weapon of technicality against the opponent. Therefore, neither the Court of law nor a litigant could use this law as noose to strangle a right which is otherwise stand established."

7. The Hon'ble Apex Court while concluding judgment reported as (**PLD 1894 SC 289**) *supra* has also observed that:-

"no doubt, ignorance of law, generally speaking, is no excuse, but then each case depends on its own facts and circumstances."

8. In the present case, as per record, the defendant despite proper service of notice by the Court abstained himself from trial proceeding. Even before this Court he did not respond to the notice. Whereas, the substantive right of recovery of the suit amount along with profit has been established in Petitioner's favour, therefore, the impugned orders dated 24-01-2010 and 16-11-2019 are set aside and the learned trial Court is directed to prepare the decree sheet in terms of judgment dated 08-04-2019, after accepting the Court Fee from the Petitioner, as per law.

9. The petition is allowed in the above terms.

(LUBNA SALEEM PERVEZ)
JUDGE