

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.4301/2013

Muhammad Yaqoob & 11 others

versus

Additional District & Sessions Judge (East), Islamabad & 5 others

Petitioner by: Mr. Hafiz Liaqat Manzoor Kamboh, Advocate.

Respondents By: Mr. Mazhar Akram Awan, Advocate for
Respondents No.3 & 4

Date of Decision: 30.09.2020.

JUDGMENT

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioners have called in question the order of the learned Additional District Judge (East), Islamabad, dated 17.09.2013, whereby revision petition filed by the petitioners against order of the learned Civil Judge, dated 07.12.2010, has been dismissed.

2. Succinctly, petitioners have filed a suit for declaration and perpetual injunction on 28.03.2005 against Raja Barkat Hussain, predecessor-in-interest of Respondents No.2 to 6, to the effect that sale mutation No.4620, sanctioned on 14.09.2004, by which the proprietary rights of petitioners in land measuring 19 Kanals & 12 Marlas, Khewat No.684 to 694, Qita 71, total land measuring 127 Kanals & 4 Marlas, situated in revenue estate of Kirpa, Islamabad have been transferred, may be declared illegal and forged. However, the suit was dismissed on 15.09.2009 in default due to non-deposit of proclamation fee, whereafter petitioners filed application for restoration of their suit, the same was turned down vide impugned order dated 07.12.2010 by the learned Civil Judge, Islamabad, whereas revision petition thereto was also declined by the learned Additional District & Sessions Judge (East), Islamabad, vide impugned order dated 17.09.2013. Hence, instant writ petition.

3. Learned counsel for petitioners contends that both the Courts below have not considered the facts mentioned in the application and rejected the same without application of judicial mind; that the matter should have been decided on merits, rather on technicalities, per se, such findings of the revisional Court are based on surmises and conjectures, therefore, same may kindly be set-aside with direction to restore the suit of petitioners.

4. Conversely, learned counsel for respondents No.3 & 4 opposed the filing of instant writ petition on the grounds that petitioners have time and again failed to comply with the orders of the Court for submission of requisite process fee / summons forms / publication fee despite the fact that more than sufficient number of opportunities were given to the petitioners to conduct meaningful proceedings, but the negligence on their part led to passing of the impugned orders, which are well within four corners of law.

5. Arguments heard, record perused.

6. Perusal of record reveals that the suit filed by the petitioners has been dismissed due to non-submission of process fee for summing of respondents through proclamation on 15.09.2009 despite the fact that petitioners have been granted three opportunities for submission of process fee, but they have shown laxity in compliance of said order, especially when the matter was pending for five years before the Civil Court and was at the stage of summoning of respondents. After dismissal of the suit, the petitioners have filed application for restoration of the suit, which was dismissed and said order was further assailed before the revisional court, whereby the order of dismissal has been maintained.

7. Learned counsel for petitioners has been confronted to justify his case with reference to the provisions applied by the learned Trial Court in terms of Order XVII Rule 3 CPC directing the petitioners to submit the process fee, per se, Order XVII Rule 3 CPC imposes an obligation upon the *party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or*

to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding each default, proceed to decide the suit forthwith. This part of the provision clearly establishes that order so passed by the learned Trial Court at first instance has to be assailed through civil revision, but petitioners have invoked the provisions of Order IX CPC by considering it a simple default, though the said process is not applicable. However, the conduct of petitioners clearly establishes that they were negligent in performance of their obligation and delayed the matter on one reason or the other; resultantly the Court had no option but to proceed accordingly in terms of Order XVII Rule 3 CPC.

8. I have also gone through the detailed order of the learned revisional court, dated 17.09.2013, wherein no illegality has been observed, hence the constitutional jurisdiction invoked by the petitioners does not rescue them from their own misdeed. No jurisdictional error or illegality has been surfaced nor highlighted on record.

9. In view of above, instant writ petition is without any merits, hence the same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.