

Form No: HCJD/C-121
ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Civil Revision No.139/2018

Shahid Khalil

Versus

Mumtaz Ali

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	11-03-2020	Mr Mujahid Islam Asif, Hafiz Farman Ullah, Advocates for petitioners. Mr Adnan Haider Randhawa, Advocate for respondent.

Through this consolidated order, I shall decide the instant petition alongwith Civil Revision No.267/2018 titled 'Shahid Khalil v. Mumtaz Ali'.

2. Briefly stated, facts of the case are that Mumtaz Ali son of Atta Ullah (*hereinafter referred to as the 'Respondent'*) filed a suit on 16-11-2016 under Order XXXVII of the Code of Civil Procedure, 1908 (*hereinafter referred to as the 'CPC'*) for recovery of Rs.1.5 million. The claim of the Respondent was against Shahid Khalil son of Khalil-ur-Rehman (*hereinafter referred to as the 'Petitioner'*). It appears from the record that the

Respondent had also registered multiple criminal cases against the Petitioner. He was arrested on 17-10-2016 and released on bail on 18-08-2017. The Petitioner was granted leave to appear and defend vide order, dated 02-02-2017. The Petitioner did not fulfill the condition and, therefore, the learned trial Court decreed the suit vide ex-parte judgment and decree, dated 21-09-2017. The petitioner filed an application for setting aside the ex-parte judgment and decree, dated 16-10-2017. The said application was dismissed by the learned trial Court vide order, dated 22-01-2018, for non-prosecution. The petitioner filed an application for restoration of the application which was dismissed vide order, dated 22-01-2018. The said application was also dismissed by the learned trial Court vide the impugned order, dated 19-04-2018. Through the instant petition the latter order has been assailed.

3. The learned counsel for the Petitioner has contended that; the Petitioner was incarcerated and, therefore, he was prevented from complying with the conditional order, dated 02-02-2017; the parties had settled the disputes and payment was also made pursuant thereto; courts always lean

towards deciding the disputes on merits rather than non-suiting a party on the basis of technicalities.

4. The learned counsel for the Respondent on the other hand has argued that; several opportunities were afforded by the learned trial Court to the petitioner but he preferred not to comply with the conditional order; the learned trial Court had also afforded reasonable opportunity to the Petitioner to comply with the conditional order and reference has been made to orders, dated 18-10-2017, 03-11-2017, 16-11-2017 and 07-12-2017.

5. The learned counsel has been heard and the record perused with his able assistance.

6. The learned counsel for the respondent, despite his able assistance, could not persuade this Court that the impugned order suffers from any legal infirmity. The record has been perused with the able assistance of the learned counsel, but no misreading or non-reading has been pointed out requiring interference by this Court. The conduct of the Petitioner is reflected from the record. He was given reasonable opportunities by the learned trial Court but he preferred not to comply with the

conditional order whereby leave to appear and defend was granted. Even after the application for setting aside ex-parte decree was filed, the learned trial Court had given opportunities but the same were not availed. The learned counsel for the Petitioner however has stated that though the entire amount has been paid to the Respondent but the disputed balance amount, if any, would be paid through installments. The learned counsel for the respondent has also not opposed payment of the balance amount in installments, provided the learned executing Court prescribes a schedule in this regard. This Court expects that the learned executing Court will consider payment of balance amount in installments and prescribe a schedule in this regard.

7. The instant Civil Revision is **disposed-of** in the above terms. Civil Revision No.267/2018 titled '*Shahid Khalil v. Mumtaz Ali*' is dismissed as having become infructuous.

(CHIEF JUSTICE)

Luqman Khan.