

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

**Civil Revision No. 370/2013**

M/s HAKAS (Pvt.) Ltd.

Versus

Abdul Qayum etc.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(11)	12.08.2020	Syed Asghar Hussain Sabzwari, Advocate for the petitioner.

**MOHSIN AKHTAR KAYANI J.** The petitioner is aggrieved with the order dated 27.02.2013, whereby Regular First Appeal filed by the petitioner has been dismissed without any justification.

2. Learned counsel for the petitioner contends that Abdul Qayyum/respondent No.1 has filed a suit for declaration, mandatory and permanent injunctions against the petitioner, which was decreed vide judgment and decree dated 24.06.2010, feeling aggrieved with the said judgment and decree, petitioner filed Regular First Appeal, which was entrusted to the Court of learned Additional District Judge (East), Islamabad and same could not be argued by the petitioner's counsel due to heavy engagement in other Courts, although cost of Rs. 200/- was imposed upon the petitioner on 15.02.2013. He further contends that it is alienable rights of petitioner to argue his case on legal grounds and petitioner has been unheard in this matter, even learned Appellate Court has neither requisitioned the record nor given

any findings on merits, rather passed the short order for non-compliance of direction, which is not permissible under the law. He further contends that petitioner has claimed adjournment on the said date through Clerk Counsel, but the said request was turned down without any legal justified reasons and it is the obligation of the learned Appellate Court to consider the record and at least apply its judicial mind on merits of the case, which has not been adhered to under Order XLI CPC.

3. On the other hand, despite issuance of notices, no one put appearance on behalf of respondents, even a substituted mode of service has been adopted through Daily Pakistan, but no one has turned up on behalf of respondents, therefore, they have been proceeded ex-parte.

4. Arguments heard and record perused.

5. Perusal of record reveals that the petitioner is mainly aggrieved with the order dated 27.02.2013, passed by learned Additional District Judge (East), Islamabad, whereby petitioner has not been given due right of hearing and his appeal has been dismissed summarily.

6. In order to understand the proposition, the impugned order has been reproduced as under:--

*"The clerk of counsel representing the appellant again requested for adjournment. Perusal of the record sheet reveals that sufficient opportunities were given to the appellant for arguments and on 15.02.2013 the case was adjourned subject to deposit the cost of Rs. 200/-. Since the cost of Rs. 200/- is not deposited/paid, in view thereof the instant appeal is dismissed accordingly. File be consigned to the record room after necessary completion."*

7. Keeping in view the above position, there is no cavil with the proposition that the petitioner has not argued his case on the given date, even certain adjournments have been made only on the request of the petitioner's counsel, even cost of Rs. 200/- was imposed upon the petitioner on 15.02.2013, but on the other hand, it is the duty of the learned Appellate Court in terms of XLI CPC while adjudicating the matter of Regular First Appeal to apply its judicial mind while considering the evidence and record, whereby the impugned order is silent qua the minimum requirements of a judgment in appeal in terms of Order XLI Rule 13, 32 and 35 CPC. In such eventuality, the duties of the learned Appellate Court have to be seen in the light of case law reported as **2009 SCMR 589 (Gul Rehman Vs. Gul Nawaz Khan)**, whereby the learned Appellate Court has to go through the record and pass a speaking order/judgment while considering the evidence available on record, even in case where the appellant fails to appear and pursue his own case.

8. The above mentioned parameters if applied in the instant matter clearly spell out that learned Additional District Judge (East), Islamabad has dismissed the appeal in a slipshod manner without adhering to the legal requirements of the learned Appellate Court's judgment in terms of XLI CPC.

9. Though the conduct of the petitioner was also not appreciable due to his absence, but propriety demands that matter should be decided on merits and not on the basis of hyper-technical reasons, especially

when the counsel for petitioner was stated to be busy before the other Courts due to his heavy engagement and request for adjournment was made by the Clerk Counsel.

10. For what has been discussed above, instant civil revision is **Allowed** as nothing is available on merits, therefore, the impugned order of the learned Appellate Court dated 27.02.2013 is hereby **Set-Aside** subject to payment of cost of Rs. 10,000/- (Ten Thousand) to the respondent, whereafter the learned Additional District Judge (East), Islamabad shall fix this matter for any date and decide the same within period of thirty (30) days after affording opportunity of hearing to the parties concerned.

11. However, it is clarified that petitioner shall be given one full opportunity for arguments in this matter without further adjournment.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

RAMZAN