

JUDGMENT SHEET

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

C.R No. 89/2016

Institute of Space Technology (IST)

Versus

Husnain Riaz, etc.

PETITIONER BY: Hafiz Arfat Ahmed Ch. &
Ms. Kashifa Niaz Awan, Advocates

RESPONDENTS BY: Mr. Rashid Hanif, Advocate

DATE OF HEARING: 12.04.2016.

MOHSIN AKHTAR KAYANI J. Through this Civil Revision petition the petitioner has assailed the order dated 14.01.2016 passed by learned Civil Judge, 1st Class (East), Islamabad, whereby, application U/S 151 CPC filed by respondent No. 1 was accepted.

2. As per Civil Revision Petition, brief facts of the case are that the petitioner is a degree awarding Institute established under Institute of Space Technology (IST) Act, 2010 and after its creation the institute is providing the quality education in the area of Space Technology, in order to strengthen its faculty, petitioner organization launched faculty development program and in pursuance of their offer letter dated 12.01.2008, respondent No. 1 was selected as Demonstrator (Air Space Engineering). As per said offer letter, respondent No. 1 was required to get admission in PhD program and after completion of the same he was to be re-appointed as Assistant Professor, therefore, respondent No. 1 had to execute a service bond of seven (7) years.

3. Under the terms of offer letter, on 18.08.2008 the petitioner organization notified the approval of authority in favour of respondent No. 1 thereby granting formal permission to pursue his higher studies abroad for the period of four (4) years against the sanctioned expenditure of Rs. 54,000 USD for whole duration of studies including tuition fee, air fare.

4. Respondent No. 1 had also executed an agreement on 15.08.2008 with the petitioner organization in which he bound himself to pay the penalty in case the terms have been violated especially if he failed to complete his studies for which scholarship has been awarded.

5. In pursuance of offer letter and agreement, petitioner organization started paying installment of scholarship, whereby, the University of Texas issued transcript and Performance Evaluation Report to the sponsoring authority i.e. the petitioner organization. It is pertinent to mention here that the payment of installment was subject to satisfactory performance. Respondent No. 1 failed to submit the report to the petitioner regarding his completion of course, therefore, after communication through email, it was observed that respondent No. 1 failed to complete his studies due to his muscle injury and subsequently the respondent No. 1 suffered from mental depression. Respondent No. 1 came back to Pakistan, whereupon, the petitioner organization issued notices to the respondents for recovery of amount spent on the basis of scholarship as well as the penalty @ 25%. Finally the suit for recovery of Rs. 3,090,672.87/- was filed before the learned Civil Court. Respondents filed written statement, thereafter issues were framed vide order dated 15.05.2013 and case was fixed for evidence. However, respondent No. 1 filed application U/S 151 CPC for the release of his passport and NOC in order to seek further employment as he has completed his MSc degree from Ghulam Ishaq Institute. The application was responded by the petitioner organization and the learned Trial Court after hearing the parties accepted the application with the direction to the petitioner for release of his NOC as well as the passport, hence, the instant civil revision.

6. Learned Counsel for the petitioner contends that Civil Court has no jurisdiction to grant the said relief under the garb of Section 151 CPC as there is no provision of law which gives an authority to the learned Trial Court to grant such a relief which was not the subject matter of the suit. Learned Counsel for the petitioner further contends that the respondents have not raised any such plea in

terms of Order VI, Rule 2 CPC. He neither asked for issuance of NOC nor for release of passport in their written statement and the issues were framed on the basis of pleadings of the parties, keeping in view the controversial and disputed facts between the parties. Learned Counsel for the petitioner further refers the issues framed by learned Trial Court, wherein, no such issue has been framed regarding release of passport of respondent /defendant No. 1 and for issuance of NOC in his favour. Learned Counsel has relied upon PLD 2011 Peshawar 178, PLD 2011 Supreme Court 151, 2014 SCMR 922.

7. Conversely, learned Counsel for respondent No. 1 states that it is the fundamental right of the respondent No. 1 to claim his passport which has been illegally retained by the petitioner organization. Even otherwise, the petitioner organization is not giving any employment to respondent No. 1, therefore, NOC for further employment is a fundamental right of respondent No. 1. Learned Counsel for respondent No. 1 further contends that the Civil Court has right to grant any relief under the changed circumstances and relied upon PLD 1978 Supreme Court 220. Learned Counsel for the respondent No. 1 further contends that they have not filed any suit or writ petition before any Court for the release of passport as well as for issuance of NOC as respondent No. 1 has filed an application U/S 151 CPC under inherent powers of the Court, to seek his relief. Learned Counsel for the respondent No. 1 contends that he has not filed any suit or writ petition in this regard even then the learned Civil Court can grant such relief.

8. Arguments heard, record perused.

9. From the perusal of record it transpires that respondent No 1 Husnain Riaz was selected as Demonstrator by Institute of Space Technology (IST) and thereafter he was awarded scholarship for PhD program for Texas University, USA. After selection of respondent No. 1 for PhD program, an agreement dated 15.08.2008 was executed between the petitioner organization and respondent No. 1 in order to finance his PhD degree whereas, respondent No. 2 had executed the surety bond as guarantor in the said transaction. Respondent No. 1 proceeded to

USA and joined his PhD program on the basis of payments made by the petitioner organization under the terms of agreement, whereas, respondent No. 1 was under obligation to submit periodical reports, however, respondent No. 1 could not complete his PhD due to his muscle injury and due to said injury he was under psychological distress and depression and he came back to Pakistan. The petitioner organization after the approval of the competent authority had sanctioned the amount of Rs. 54,000 USD for the said program and the amount has been paid by the petitioner organization to the concerned university and due to non completion of course work, scholarship has been terminated on the report of University of Texas, therefore, respondent No. 2 being guarantor of respondent No.1 is allegedly liable to pay the amount as well as the penalty which has been calculated as Rs. 38,63,341.08/-, therefore, petitioner organization filed a suit for recovery against respondents No. 1 & 2 on 30.07.2012 and the same was contested by respondents No. 1 & 2 by filing of their written statement. On the basis of divergent pleadings of the parties issues were framed on 15.03.2013 and at present the case is fixed for recording of evidence. Respondent No. 1 has filed an application for issuance of NOC and release of his passport which has been retained by the petitioner organization on the direction of their competent authority. The said application was contested and finally allowed through impugned order.

10. From the perusal of record it is surfaced that respondent No. 1 in his written statement has not raised this question or plea that his passport has been retained by the petitioner and they have also refused to issue the NOC, hence, the said relief which has been granted through impugned order cannot be granted under the procedural law, the same cannot be awarded in the suit for recovery filed by the petitioner. Even the concept of set-off can only be applied if the defendant raised cross claim but from perusal of the written statement no such claim has been agitated before the Court. The plea in terms of Order VI Rule 2 CPC which has not been raised in the pleadings of the parties cannot be allowed at the subsequent stage of evidence as the other side has not aware of the same and raising of any

such plea which is not part of the pleadings is not allowed. Even otherwise, parties are not allowed to travel beyond their pleadings. Reliance is placed upon **2014 SCMR 922 titled as "Messrs Essa Engineering Company Pvt. Ltd. and another V.s Pakistan Telecommunication Company"** wherein it was held that:-

"Pleadings, significance of---Framing of issues---Pleadings of the parties were the benchmark of their respective claims on which issues were drawn and evidence was led---evidence was restricted to the issues struck between the parties alone and not beyond them---When any evidence beyond the purview of issues did come on record, no party could on basis of such evidence set up altogether a new case and press the same for getting relief merely on basis of an out of context evidence".

PLD 2011 Peshawar 178 titled as "Government of Khyber Pakhtoonkhwa through Secretary, B.O.R. and 3 others V.s Mst. Khaista Jana alias Bilquis Khisro and 2 others" wherein it was held that:-

"Party to suit could not travel beyond his pleadings---Claim not asserted in pleadings of a party could not be entertained".

11. It is settled proposition of law that Civil Courts have inherent powers under Section 151 CPC to do complete justice between the parties and mould the relief according to changed circumstances as the counsel for respondent has put his reliance upon **PLD 1978 Supreme Court 220 titled as "Mst. Amina Begum and others V.s Mehar Ghulam Dastgir"** wherein it was held that:-

"To avoid multiplicity of proceedings, to shorten litigation, and to do complete justice between parties and mould relief according to altered circumstances in larger interest of justice-Discretion in this regard vested in Courts to be judicially exercised in proper cases".

However, the arguments advanced by the learned Counsel for respondent No. 1 regarding mould of relief under changed circumstances and the judgment of Hon'ble Supreme Court of Pakistan is not applicable in the present circumstances of the case due to the fact that respondent No. 1 in his written statement has not claimed any such relief even otherwise, the main suit is for recovery of amount in which respondent No. 1/defendant can at the most claim set-off as counter claim only to the extent of his amount, if any, other claim i.e. release of passport as well

as NOC is beyond the scope of subject matter of lis, therefore, the learned Trial Court cannot extend such relief while exercising its power under Section 151 C.P.C, as by any stretch of imagination Court while exercising its powers U/S 151 C.P.C cannot jump over the limits and boundaries of the pleadings of the parties. Following principles of use of inherent powers have been referred for the purpose of guidance.

- i. **PLD 1995 Karachi 416 titled as "Muhammad Zaki and another V.s Muhammad Taqi"** wherein it was held that:-

*"Inherent jurisdiction of Court---Scope---Civil Court although has inherent powers to make orders which would be necessary to secure ends of justice, or to prevent abuse of process of Court, yet such powers were required to be exercised discreetly---One such condition precedent for exercise of powers Under S. 151, C.P.C. was that **there should be no other adequate remedy available or there should be no other provisions in C.P.C providing for the intended object**---Where Trial Court was of opinion that evidence was to be recorded to determine points in issue, such discretion of Trial Court would warrant no interference under provisions of S. 151, C.P.C.*

- ii. **PLD 1977 Supreme Court 599 titled as "Messrs Conforce Ltd. V.s Syed Ali Shah etc"**, wherein it was held that:-

"Provisions of S. 151-Cannot be invoked to defeat provisions of Civil Procedure Code, 1908-Nor can such provisions be invoked to further injustice or to condone gross negligence"

- iii. **2011 CLC 164 titled as "PESCO through Chief Executive, WAPDA House, Peshawar and 4 others V.s M/s. Tariq Cold Storage through Managing Director and 3 others"**, wherein it was held that:-

*"Section 151, C.P.C., is enabling provision, intent and purpose of the law maker was that inherent powers only to be exercised when there is no express provisions of law applicable, the court is empowered to resort to the powers for advancement of cause of justice, therefore, **under this section omnibus and indiscriminate exercise of powers by a court of law in adjudication of lis not permissible, amounts the violation and over stepping of prescribed parameters of the law**, not only amounts to misuse of powers but thereby promoting, facilitating and encouraging and indolent party to suit, who has failed to exhaust the remedies provided under law.*

While exercising the powers under section 151, C.P.C., the court must be at guard that the powers exercised for furtherance of cause of

justice not misused or causing injustice to other party or having the overriding effect over the express provisions contained in law, no order can be passed while exercising such inherent powers whenever there is other remedy available to the party to redress the wrong so suffered”.

iv. **PLD 1985 Karachi 60 titled as "Messrs National Bank of Pakistan V.s**

Mst. Perveen Akhtar” wherein it was held that:-

"gross negligence and inherent powers of Court could not be exercised in aid of such negligence”.

v. **AIR 2005 GAUHATI 154 titled as "Samat Kumar Mundhra V.s Smt.**

Suman Kbra and another” wherein it was held that:-

"In the case of M/s. Ram Chand & Sons (AIR 1966 SC 1899) (supra), the Apex Court held that the inherent power of a Court under Section 151, CPC will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are other provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions”.

vi. **PLD 2006 Supreme Court 66 titled as "Javaid Iqbal V.s Abdul Aziz and**

another” wherein it was held that:-

"The Code of Civil Procedure 1908 (hereinafter referred as the Code) was enacted to regulate the proceedings before the civil Courts. Provisions contained in the Code are mainly rules of procedure. It is well-settled that all procedural laws are subservient to the cause of justice and, therefore, such laws neither limit nor control the power of the Court to pass an order or decree, which is necessary to do complete justice in the facts and circumstances of the case. Construction of procedural law in a manner, which tends to obstruct the course of justice, must be avoided as far as possible. The authors of the Code were fully conscious of the underlying object of procedural law and, in all probability in order to remove and dispel all doubts in this regard, categorically provided in section 151 of the Code that "nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of process of the Court”.

12. Inherent powers under Section 151 CPC does not mean unlimited powers beyond the scope of pleadings and even beyond the subject matter, especially when relief claimed in application has not been put forward in plaint or written statement, opposite party has not been given fair chance to explain the reasons and circumstances under which the issue has been raised without application of

jurisdiction of the Court. Inherent powers U/S 151 CPC can only be applied in those cases where powers of courts are not well defined in procedural law or where circumstances warrant to exercise the same in aid to decide the controversial issues within parameters defined under the law as well as through the backing of some procedure in a manner provided under the law. Reliance is placed upon.

- i. **2011 CLC 164 titled as "PESCO through Chief Executive, WAPDA House, Peshawar and 4 others V.s M/s. Tariq Cold Storage through Managing Director and 3 others"** wherein it was held that:-

"The act must be done in the manner as provided under the law or not at all

If doing an act is made lawful in a particular manner, if performed in any other manner not provided under the law would be unlawful

- ii. **PLD 2002 Peshawar 50 titled as "Muhammad Shafiullah V.s Government of Pakistan through Secretary, Parliamentary Affairs Division, Pak Secretariat, Islamabad and 5 others.**

"It is well settled that thing required to be done in a particular manner must be done in that manner or not at all and doing something which is in conflict with that would be not only unlawful but malafide, whereby rendering is at without jurisdiction".

Hence it is manifestly clear that the subject matter which is not before the Court or which has not been agitated before the Court through pleadings cannot be decided in such a manner especially when the respondent No. 1 claims the passport and NOC through the application U/S 151 CPC on the basis of his personal right whereas Section 42 of Specific Relief Act, 1877 imposes a duty upon the person claiming the right to file a suit, Section 42 is reproduced as below:-

Discretion of Court as to declaration of status or right:

*"Any person entitled to any legal character, or to any rights as to any property, **may institute a suit** against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief".*

13. The question which has been decided by the learned Civil Court in the impugned order is beyond its scope as no such question has independently been raised through a separate proceedings in terms of Section 9 of CPC, therefore, the impugned order dated 14.01.2016 is without jurisdiction as the learned Trial Court has exercised the jurisdiction not vested in it, hence impugned order is hereby set-aside, however, keeping in view the peculiar circumstances, learned Trial Court is directed to conclude the trial within a period of two (02) months. Respondent No. 1 is at liberty to seek his relief of release of passport and issuance of NOC from the petitioner organization through independent proceedings from the competent court of law, if so advised. Therefore, Civil Revision Petition stands accepted.

(MOHSIN AKHTAR KAYANI)
JUDGE

Approved for reporting.

JUDGE

Ramzan

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