

ISLAMABAD HIGH COURT
ISLAMABAD

CR. NO.316/2015

MUHAMMAD RAFAQAT.

Versus

MUHAMMAD SHAKEEL KHAN.

Sr.No. of order/ Proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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13.02.2020

Mr. Rifaqat Islam Awan, Advocate for petitioner.
Mr. Ahmed Nawaz Bhatti, Advocate for respondent.

Through instant Civil Revision Petition, the petitioner has assailed order dated 25.05.2015, whereby, the application for leave to defend filed by the Petitioner was dismissed as barred by limitation.

2. Learned counsel for the Petitioner, *inter alia*, submitted that the Respondent filed suit for recovery of Rs. 4,80,000/- for default of payment of rent in respect of a vehicle rented to the Petitioner. Learned Counsel further submitted that Petitioner's right to leave to defend was denied considering it to be time barred for 12 days. He further contended that the impugned order dated 25.05.2015, is not sustainable under the law in as much as the procedure and legal requirements for service of notices prescribed under the law have not been followed and that the Petitioner's application for leave to defend has been dismissed merely on technical grounds which is a material irregularity and amounts to miscarriage of justice.

3. Learned counsel for the Respondent submitted that the impugned order dated 25.05.2015 does not suffer from any legal infirmity, however, admitted that the application has been dismissed on mere technicality.

4. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

5. Perusal of record reveals that the suit against the Petitioner has been filed alleging recovery of Rs. 4,80,000/- which allegation was denied by the Petitioner and he filed application for leave to appear and defend the suit, whereas, it has been observed that the learned District Judge, Islamabad (West) has decided said application merely on the point of limitation without touching its merits. Basically, suits filed before the Courts below, under original jurisdiction, comprises of factual controversies, therefore, need proper deliberations on the documentary evidence, witnesses and statements on the issue, so as to arrive at the just conclusion. Thus, it is the duty of the Court to give proper opportunity of hearing to the parties in accordance with law by adhering to the relevant provisions of the CPC, whereas, disposing of any matter/application in a mechanical manner on the basis of mere technicality has been deprecated by the superior Courts and it has now been well settled that party may not be non-suited merely on technical grounds but the case should be decided on merits. Reliance is placed on cases reported as 2009 SCMR 574 and 2019 YLR 1055 (HC Khi) wherein, it has been held that law prefers decision of cases on merit and discourage technical knockout.

6. In view of the above discussion, instant Civil Revision Petition is allowed and the impugned order dated 25.05.2015 is set-aside; resultantly, the application for leave to appear and defend submitted by the Petitioner shall be deemed to be pending before the learned trial Court so as to decide afresh, in accordance with law, after providing opportunity of hearing to the parties in the light of observations of this Court, hereinabove.

(LUBNA SALEEM PERVEZ)
JUDGE