

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 223/2019.

Haji Muhammad Suleman

Versus

Muhammad Islam, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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21.11.2019.	Mr. Muhammad Ishtiaq Ahmed Raja, Advocate for petitioner. Malik Awais Haider, State Counsel. Mr. Amjad Hameed Ghouri, Mr. Nasir Ahmed Abbasi and Mr. M. Najeeb Malik, Advocates for respondents.
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Through this CrI. Misc., petitioner has assailed the order dated 28.06.2018, passed by Civil Judge 1st Class (West), Islamabad on the application U/S 476 Cr.P.C., which was dismissed and order dated 31.07.2018, passed by learned Sessions Judge (West), Islamabad, whereby criminal revision filed against the said order has been dismissed.

2. Learned counsel for the petitioner contends that a civil suit for specific performance of agreement/Iqrarnama dated 30.12.1993, recovery of rent Rs.11,75,225/- alongwith bank rate interest and mandatory injunction was filed by respondents titled Muhammad Islam, Major (Rtd), etc. Vs. Haji Muhammad Suleman Abbasi, etc. the same was decided by the Civil Court vide judgment & decree dated 28.06.2018 and the suit was dismissed and at

present RFA is pending before District Court, however, during proceedings of the said civil suit respondents have relied upon typed document, which is appended with plaint referring deposit slip dated 24.01.1997 for cheque No.097850 amounting to Rs.1,25,550/- in favour of defendant No.1 alongwith deposit slip appended with plaint of ABL but the said documents is fake as such there was no transaction of the said date, therefore, petitioner has filed application U/S 476 Cr.P.C. which was dismissed by the learned trial Court without considering the legal background and same was maintained in criminal revision without adhering to the legal procedure provided to deal with the situation U/S 476 Cr.P.C.; that preparation of fake document which has been presented in the civil Court has to be considered in terms of procedure provided under Section 476 Cr.P.C. but no effort has been made by the trial Court and impugned order has been passed in mechanical fashion.

3. Conversely, learned counsel for the respondents contends that details of deposit slip typed by respondents' side appended with the plaint has typographical error in referring the year of deposit slip i.e. 23.04.1994, which has further been substantiated through bank record and as such no forgery has been committed, even an application for correction of record has been filed but the same was dismissed; that concurrent findings of the fact noted by the Courts

below could not be reopened in criminal miscellaneous petition.

4. Arguments heard, record perused.

5. Perusal of record reveals that civil suit titled Muhammad Islam, Major (Rtd), etc. Vs. Haji Muhammad Suleman Abbasi, etc., for specific performance of agreement/iqrarnama dated 30.12.1993, recovery of rent Rs.11,75,225/- alongwith bank rate interest and mandatory injunction was filed before the Civil Court, which was dismissed after recording of evidence vide judgment & decree dated 28.06.2018, however, the same is subjudice before the Appellate Court. The petitioner who was defendant in the suit filed an application U/S 476 Cr.P.C. for initiation of proceedings against present respondents for preparation of fake documents which was used by the respondents in the civil suit. The relevant extract of the petitioner's complaint referred in application U/S 476 Cr.P.C. is as under:-

۴۔ یہ کہ EX-P20 کے رو سے مسئول علیہم نے رقم مبلغ ایک لاکھ پچیس ہزار پانچ سو پچاس روپے (Rs.1,25,550/-) سائل کے بینک میں مورخہ 24-04-1997 کو جمع کروانے کا بیان دیا۔ اور اس رقم کی تفصیل منسلک فہرست دستاویزات ہمراہ عرضی دعوئی شامل کی جس کی رو سے رقم مذکورہ سائل کے اکاؤنٹ نمبر 481، الائیڈ بینک، قائد اعظم ایونیو براچ، اسلام آباد، میں جمع کروانے کا بیان دیا۔

۵۔ یہ کہ مذکورہ تفصیل مجوزہ ادائیگی رقم میں مسئول علیہم نے باقاعدہ تفصیلات کا ذکر کیا جس میں چیک نمبر، چیک کی تاریخ، ادا کرنے والے کا نام ظاہر کیا گیا ہے۔

۶۔ یہ کہ مسئول علیہ نمبر 1 نے بطور گواہ بھی ان تفصیلات کو تسلیم کیا۔ لیکن دوران شہادت جب سائل بطور گواہ پیش ہوا تو مسئول علیہم نے چیک نمبر 97850 پیش کیا تو چیک مذکورہ پر

مورخہ 23.04.94 کی تاریخ درج شدہ ہے جو کہ مورخہ 25.04.94 کو الائیڈ بینک سوک سنٹر برانچ میلوڈی اسلام آباد، سے کلیئر ہونے کی مہر ثبت ہے۔ اور اس دوران اکاؤنٹ ہولڈر مسئول علیہ نمبر 2 کو بیان کیا گیا ہے۔

۷۔ یہ کہ مسئول علیہ مذکورہ تفصیل کاغذات میں جمع کیا جانا درست تسلیم کرتے ہوئے ایک درخواست مورخہ 09.02.2017 کو معزز عدالت حضور میں دائر کی جس میں نمبر شمار 10 پر موجود مندرجات میں سے محض /تاریخ کی درستی کی استدعا کی جبکہ باقی اندراج کی بابت کسی قلمی غلطی یا کتابت کی غلطی کا ذکر نہ کیا ہے اور اس طرح باقی کے مندرجات کو من و عن تسلیم کیا ہے اور اس درخواست کے مندرجات کو بذریعہ حلفی درست قرار دیا ہے۔

6. The above referred claim was denied by the respondents side in the following manner:-

4. That the contents of Para no. 4 are denied as stated. The amount of Exhibit P-20 was deposited through a cross cheque "payee's a/c only" in the petitioner/defendant no.1 account. The defendant No. 1 is not producing the bank statement of the relevant period. Coloured copy of the cheque No.097850 dated 23-04-1994, along with its payment confirmation certificate, as per the bank record by UBK bank manager, Pak Secretariat Branch Islamabad, cleared for Allied Bank of Pakistan, West-Khayaban-e-Quaid-e-Azam branch, Malik Plaza Islamabad through the Main Branch, Allied Bank of Pakistan, Civic Center Islamabad (As per the banking procedure practiced at the time) is enclosed to prove the confirmation of deposit. The bank receipts are pre-se admissible in terms of bankers' book of evidence.

7. In view of above, learned trial Court has dismissed the application vide order dated 28.06.2018, passed by learned Civil Judge 1st Class (West), Islamabad mainly on the ground that no fraud has been

committed, nor any forged document has been presented and has also explained the entire scenario or presentation of document Ex.P-20.

8. The entire proposition is based upon the typed list of annexures and deposit slip appended with civil suit is the main bone of contention whereby deposit slip of cheque No.097850 amounting to Rs.1,25,550/- deposited in defendant No.1 account No.481 has been referred as date 24.04.1997, which was in fact 23.04.94 and the said date correction has already been claimed by the respondents' side through an application before the Civil Court and it has been contended that date was incorrectly typed.

9. Besides the above referred position the fact of wrong document or forged document has not been discussed in the judgment & decree dated 28.06.2018, passed by learned Civil Court, which is pending before the Appellate Court, therefore, when there is no findings regarding the alleged forgery in the judgment of Civil Court, subsequently further proceedings are not maintainable, although the mistake in typing of one date could not be considered as a fraud rather it is an unintentional typographical mistake of the year 1994, which was written as 1997, which has been confirmed through deposit slip of ABL.

10. I have gone through the concurrent findings of both the Courts below and as such I am in full agreement with the findings of the learned trial Court

and learned Revisional Court, even application for correction was also filed by the respondents side for rectification of mistake and submitted affidavit to that effect which shows their bonafide, therefore, instant petitions is misconceived and the same is hereby *dismissed*.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid