

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

**F.A.O No. 40 of 2019**

Sajjad Ahmed Chaudhry

Versus

Shahid Mansoor Sarwar Malik

Appellant by : Mr. Saqib Shafique, Advocate.

Respondent by : Sardar Nisar Ahmed, Advocate.

Date of Hearing : 17-04-2019.

**ATHAR MINALLAH, CJ.-** This appeal is directed against order, dated 08.02.2019, passed by the learned Additional District Judge, Islamabad West.

2. The facts, in brief, are that Mr. Shahid Mansoor Sarwar Malik (hereinafter referred to as the "**Respondent**") filed a suit under Order XXXVII of the Code of Civil Procedure, 1908 (hereinafter referred to as "**CPC**"). After exhausting various modes for service the learned trial Court proceeded ex-parte against the appellant, which ultimately led to passing of ex-parte judgment and decree, dated 08.01.2018. The appellant filed an application on 18.07.2018 seeking setting aside ex-parte judgment and decree, dated 08.01.2018. The application was dismissed vide the impugned order, dated 08.02.2019.

3. The learned Counsel for the appellant has argued that; the impugned order is based on misreading and non reading; it is

obvious from plain reading of Ex.P-2 that the amount was not received by the appellant regarding which the suit was filed; the appellant was incarcerated pursuant to registration of FIR no. 184/2017; the said criminal case was registered on the basis of application filed by the Respondent; the latter was aware that the appellant was incarcerated but this crucial fact was concealed from the learned trial Court; the learned trial Court was under an obligation to issue production orders for presence of the appellant; reliance has been placed on cases titled "*Brig.(Retd.) Mazhar-ul-Haq and another V. M/s Muslim Commercial Bank Limited, Islamabad and another*" [**PLD 1993 Lahore 706**], "*Muhammad Nadeem Amin V. Ch. Farasat Ullah*" [**PLD 2006 Lahore 32**] and "*Salu-ud-Din V. Ahmed Saeed*" [**2005 YLR 2450**].

4. The learned Counsels have been heard and the record perused with their able assistance.

5. Perusal of the record shows that the learned trial Court after exhausting various modes for serving summons/notices, proceeded ex-parte against the appellant, which led to passing of ex-parte judgment and decree, dated 08.01.2018. The appellant had taken the plea that he had sold the house and was no more living on the address mentioned in the plaint. However, the appellant did not place material on record to establish the said assertion. The learned Counsel for the appellant, despite his able assistance, could not show that jurisdiction was exercised in an arbitrary or fanciful manner. The impugned order is well reasoned and definitely sustainable in law because it does not suffer from legal infirmity.

6. For what has been discussed above, the instant appeal is without merit and is, therefore, accordingly dismissed.

**(CHIEF JUSTICE)**

Saeed.

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