

JUDGEMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No.359/2016
Khalid Pervez Bhatti Vs Mst.Madiha Rafiq

Petitioner by: **Naseer Anjum Awan, Advocate.**

Respondents: **Raja Niaz Ahmed Rathore, Advocate.**

Date of hearing: **1.11.2016.**

AAMER FAROOQ, J.- Through the instant petition, the Petitioner has assailed order dated 24.9.2016 whereby the application under Section 24 Code of Civil Procedure, 1908 for transfer and consolidation of suit filed by the Petitioner was dismissed.

2. The facts, in brief, are that respondent No.1 filed a suit for recovery of Rs.1500000/- against the Petitioner on the basis of a pronote dated 29.10.2011 and a cheque dated 2.3.2012 before the District Judge-West, Islamabad. In the suit conditional leave to appeal was granted to the Petitioner; whereafter evidence was led by the parties and case is at the stage of final arguments. The Petitioner filed a suit for cancellation of cheque dated 2.3.2012 and pronote dated 29.10.2011 as well as appropriate injunction against the respondent No.1 in the Civil Court West, Islamabad; the referred suit is pending adjudication before the Civil Judge-West, Islamabad for arguments on miscellaneous applications. The Petitioner moved an application before the District Judge West, Islamabad for consolidation of the above mentioned suits by way of transfer of the case for cancellation and injunction filed by the petitioner to the Court of Addl.District Judge, Islamabad, who is seized of the recovery suit filed by respondent No.1 against the petitioner. The referred

application was dismissed by the learned District Judge-West, Islamabad vide order dated 24.9.2016.

3. Learned counsel for the Petitioner, interalia, submitted that the application under section 24 CPC filed by the petitioner was dismissed on the ground that jurisdiction of the two courts is different as the one is exercised under Order 37 CPC whereas the other is of plenary jurisdiction; that the learned District Judge-West exercised jurisdiction with material irregularity inasmuch as under Section 7 of Civil Court Ordinance, 1962, the jurisdiction of a District Judge in civil suit is without limit, therefore, District judge has the jurisdiction to hear any civil claim. In support of his contention learned counsel placed reliance on case titled Zahid Zaman Khan Vs Khan Afsar (PLD 2016 SC 409) Sheikh Iqbal Hussain Vs Anzar Hussain (2005 YLR 181) and Muhammad Yaqoob Vs Behram Khan (2006 SCMR 1262).

4. Learned Counsel for the respondent, interalia, submitted that the application was filed by the petitioner under section 24 CPC on the basis of malafide in order to delay adjudication of the suit filed by the referred respondent. In this behalf it was contended that the petitioner filed suit for recovery under Order 37 CPC on 22.5.2014 whereas the Petitioner filed suit for cancellation on 15.6.2014; that in other suit filed by the respondent evidence was led and case is ripe for final arguments and no application for consolidation was made, until recently; that application was filed only on 16.9.2016 which was dismissed on 24.9.2016. Learned counsel also contended that the plea raised by the plaintiff in suit for cancellation is that the pronote and cheque were obtained by the respondents through coercion and pressure and the same plea has been taken in the written

statement therefore, no prejudice would be caused to the petitioner in case the suits are not consolidated.

5. The petitioner seeks consolidation of the two suits pending in two different courts. In this regard the suit titled Madiha Rafique VS Khalid Pervez Bhatti was filed prior in time under Order 37 CPC and is pending before the Addl.District Judge-West, Islamabad whereas the suit filed by petitioner is later in time and is pending in Civil Court West, Islamabad. The application for transfer and consolidation was filed by the petitioner before the District Judge-West, Islamabad under Section 24 CPC 1908. The reason for dismissal of the application u/s 24 ibid by the District Judge is that jurisdiction of the two courts is different and the District Court does not have the jurisdiction and power to hear and decide a case for cancellation of the cheque and pronote filed by the petitioner. Under Section 7 of the Civil Courts Ordinance, 1962, the District Judge has unlimited jurisdiction with respect to the Civil Suits/claims. Similarly under Section 12(2) of the referred Ordinance the District Judge may withdraw any proceedings taken cognizance of by or transfer to a Civil Judge and may either himself dispose them of or transfer them to a Court under his control competent to dispose them of. The bare reading of the above two provisions of law shows that District Court is the court of principal civil jurisdiction and is competent to hear and adjudicate any civil claim. Reliance is placed on the case Sheikh Iqbal Hussain Vs Anwar Hussain (2005 YLR 181). In so far as the consolidation of suits is concerned the same is the prerogative which is to be exercised on the dictate of the justice. The Honourable Supreme Court of Pakistan in case titled Zahid Zaman Khan Vs Khan Afsar

(PLD 2016 SC 409) laid down the principles for consolidation of the suits and it was observed as follows:-

It is settled law that it is the inherent power of the court to consolidate suits and the purpose behind it is to avoid multiplicity of litigation and to prevent abuse of the process of law and court and to avoid conflicting judgements. No hard and fast rule forming the basis of consolidation can be definitive and it depends upon the facts and the points of law involved in each and every case, obviously where the court is persuaded that the interests of justice so demand, consolidation can be ordered, provided no prejudice is caused to any litigant and there is no bar in the way of the courts to consolidate the suits.

Similar observation was made by the Apex Court in case titled Muhammad Yaqoob Vs Behram Khan (2006 SCMR 1262).

It is well settled by a long chain of authorities that the consolidation of the suits can be ordered by the court in exercise of the inherent powers. The consent of the parties is not the condition precedent for exercise of such powers. The purpose of consolidation is to avoid multiplicity of litigation to eliminate award of contradictory judgements and to prevent the abuse of the process of the court.

The upshot of the above mentioned dicta of the Honourable Supreme Court is that consolidation of the suits is to be ordered in order to avoid contradictory judgements and for better administration of justice.

6. Undoubtedly, both the above mentioned suits were filed about at the same time and never ever efforts were made by the petitioner for their consolidation and at this belated stage effort to consolidate the two suits seems to be for the reason of delaying the suit for recovery filed by the respondent. However, it is also an admitted position that the subject matter of the two suits is the same i.e the above noted pronote and the cheque and in case the two suits are

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adjudicated separately there is likelihood of conflicting judgements. Since subject matter of the two suits is the same therefore, in the interest of justice it is proper that they be consolidated and heard together despite the fact that they are at different stages of adjudication. The learned District Judge while dismissing the application Under Section 24 CPC by the petitioner exercised jurisdiction with material irregularity.

7. In view of above instant Civil Revision is allowed and impugned order dated 24.9.2016 is set-aside. The case titled Khalid Pervez Bhatti Vs Madiha Rafique is transferred from the court of Malik Naseer Khan Civil Judge-West, Islamabad to the Court of Muhammad Atta Rabbani, Addl.District Judge-West, Islamabad where the case titled Madiha Rafique Vs Khalid Pervez Bhatti is pending; similarly both the suits are consolidated. Since the suit for recovery filed by the petitioner is pending since long, therefore, learned ADJ-West, Islamabad seized of the matter is expected to decide both the above mentioned suits expeditiously preferably within a period of 45 days from receipt of this order.

(AAMER FAROOQ)
JUDGE

M.S.ZAKI

Approved For Reporting