

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**(JUDICIAL DEPARTMENT)**

**C.R. No.141/2019**  
Sardar Khan Niazi  
*versus*  
Chaudhry Taj Muhammad

Petitioner by: Syed Mujtaba Haider Shirazi, Advocate.

Respondent by: Raja Muhammad Abdul Wase, Advocate.

Date of Decision: 17.09.2020

**MOHSIN AKHTAR KAYANI, J:** Through the captioned civil revision petition, the petitioner has called in question judgment of the learned Additional District Judge-VI (East), Islamabad, dated 20.07.2017, whereby appeal preferred by Respondent has been accepted by setting aside order of the learned Civil Judge 1<sup>st</sup> Class (East), Islamabad, dated 01.06.2017.

2. Succinctly, the petitioner being decree holder sought execution of the decree dated 19.12.2002 regarding recovery of Rs.6,463,374/-, though on the objection of the respondent (judgment debtor) both the parties agreed to get the profit calculated by the official of the State Bank of Pakistan, whereas the calculation so done by the latter was objected to by the petitioner being not in line with the judgment of the apex Court. The learned Executing Court after hearing the arguments of both the parties partially accepted the objection raised by the petitioner and ordered the respondent to deposit an amount of Rs.3,076,685/- in addition to the amount calculated by the official of State Bank of Limited. Feeling aggrieved thereto, the respondent preferred an appeal, which was accepted. Hence, instant civil revision petition.

3. Learned counsel for petitioner contends that the pecuniary value of the appeal was beyond jurisdiction of the learned Appellate Court, to which the petitioner had also raised objection but same was not taken into account while passing the impugned judgment; that impugned judgment has been passed

without appreciating the spirit of cause sought to be adjudicated upon through the application, as such, passing of the impugned judgment is against the law and facts of the case, which is liable to be set-aside.

4. Conversely, learned counsel for respondent opposed the filing of instant civil revision petition on the grounds that learned trial Court while accepting the objection petition has not applied the judicial mind, as such, order of the learned trial Court, dated 01.06.2017, was the result of misreading and non-reading of evidence, which was rightly appreciated by the learned first Appellate Court while passing the impugned judgment, therefore, instant civil revision petition may be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioner is aggrieved by the judgment dated 20.07.2017, passed by learned Additional District Judge-VI (East), Islamabad, whereby the appeal filed by Respondent has been allowed in the following manner:

*“By perusal of the record it is found that on the date of the impugned order the appellant was not giving any opportunity to make argument so that he could clarify that what further amount was liable to be paid by the judgment-debtor. As no one could be condemned unheard, therefore, the order of the learned trial Court is set-aside and is directed to give one single opportunity to the appellant/judgment-debtor that why should an additional amount Rs.30,766.85/- may not be paid to the decree holder and the representative of the state bank may also be called for the description of the anomaly in the calculation be justified before the learned trial Court.”*

7. The abovementioned operative part of the impugned judgment clearly spells out that the learned Appellate Court has not given any finding qua merits of the case, rather remanded the case to the learned Executing Court only on ground that respondent was not afforded due opportunity of hearing by the learned Executing Court. Accordingly, the learned Executing Court was merely directed to afford one single opportunity of hearing to the appellant/judgment debtor to explain his position.

8. The order passed by the learned Appellate Court is a simple remand order through which no one could claim that any of his legal right has been denied or other grounds raised by the present petitioner in the instant case have been adjudicated upon, therefore, while relying upon 2018 SCMR 1177 (Allah Ditta & others v. Member (Judicial), Board of Revenue, etc.) and 2019 MLD 1 Lahore (Malik Rab Nawaz vs. Mst. Saban), the instant civil revision petition is misconceived and same is hereby DISMISSED as impugned judgment is within four corners of law and no illegality has been observed therein. It is expected from the learned Executing Court to decide the question in accordance with law, within the period of 30 days after hearing the parties.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: 28 Sept 2020 :

JUDGE

Khalid Z.