

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CIVIL REVISION NO.199/2015

CH. ABDUR REHMAN.

Vs.

MUHAMMAD IFTIKHAR.

Petitioner by: In person.

Respondent by: In person.

Date of hearing : 17.02.2020.

LUBNA SALEEM PERVEZ, I. Through instant civil revision petition, Petitioner has assailed judgment and decree dated 11.02.2015, passed by the learned Additional District Judge, West, Islamabad, whereby appeal of the Petitioner filed against judgment and decree dated 22.11.2014, passed by the learned Civil Judge (West) Islamabad, was dismissed being devoid of merit.

2. Necessary facts of the case are that the Petitioner advanced an amount of Rs. 24,500/- as loan on 19.06.2013 to the Respondent for investment in TIENS (Tianshi International Company Pakistan) for a period of 40 days. On Respondent's refusal to return the amount after given time, Petitioner served legal notice dated 23.09.2013 upon the Respondent and claimed basic amount of Rs. 24,500/- along with damages and fee for Advocate concerning issuance of legal notice and thereafter filed Civil Suit No. 446/2013, before Civil Judge 1st Class, Islamabad West, for the recovery of Rs. 100,000/- break-up of which is as under:

i.	Basic amount	Rs. 24,500/-
ii.	Legal Notice and Professional Fee of the Advocate	Rs. 15,000/-
iii.	Damages and Financial Loss	Rs. 35,000/-
iv.	Mental torture and agony	Rs. 25,500/-
v.	Consequential and recurring loss at the rate of Rs. 10,000/- per month from the date of institution of the suit till the final recovery of the whole amount.	Adjustable at the time of decree.
Total		Rs. 100,000/-

3. The learned Civil Judge, vide judgment dated 22.11.2014, decreed the suit to the extent of entitlement of Rs. 24,500/-, whereas, remaining claim of the Petitioner was dismissed and with regard to claim of litigation expenses, the learned Civil Judge observed as under:

I have carefully gone through the record as well as evidence produced by the parties, from where it reveals that defendant got a loan of Rs. 24,500/- from the plaintiff and also put his signatures on Ex.P.1 and same is admitted by defendant during evidence. Record further reveals that basic amount of loan is Rs. 24,500/- which was given to the defendant by the plaintiff, but through the instant suit plaintiff has demanded recovery of legal fee, financial losses and damages, on account of mental torture and agony etc but plaintiff has not brought any cogent reliable evidence to substantiate his version in this respect. So far as, Ex.P5 is concerned it is only a receipt of the counsel fee issued by an advocate, but plaintiff has failed to produce the author of this document for its corroborative testimony, therefore, Ex.P.5 carries no weight in the eyes of law. Further it is pertinent to mention here that although plaintiff submitted the receipt of the counsel fee as Ex.P.5, but whole trial of the case was conducted by himself.

4. Being aggrieved with the judgment dated 21.11.2014, Petitioner preferred appeal No. 64/2014, which was dismissed by the learned Additional District Judge West-Islamabad vide judgment and decree dated 11.02.2015, while observing as under:

"In the light of the above discussion this Court is of considered opinion that the learned trial Court has rightly decreed the suit of the plaintiff against the defendant to the extent of recovery of Rs. 24,500/-. Resultantly I found no illegality or infirmity in the impugned judgment and decree passed by the learned trial Court; hence instant appeal being devoid of merits and having no force is accordingly dismissed."

5. The Petitioner, who is also an advocate, argued that the Respondent after obtaining loan of Rs. 24,500/- from him refused to return the same despite several requests and after being disappointed, he served legal notice and when no reply was received, he filed Civil Suit No. 446/2013, for return of the amount along with damages and cost of litigation which was unlawfully dismissed, vide judgment dated 22.11.2014, without appreciating the documentary as well as oral evidence produced by him during trial. Petitioner stated that the learned Appellate Court has decided the appeal in a hasty manner without application of proper judicial mind and asserted that he is legally entitled for the litigation cost as he engaged an advocate to conduct the case and as he suffered mental torture and

agony, therefore, he is entitled for damages in this regard from the Respondent since, he has deliberately withheld his money without any lawful excuse which has not been returned till date. Learned Counsel in support of his contentions relied on the case law reported as Mst. Bibi Shah Ban (Deceased) through L.Rs. and others Vs. Land Acquisition Collector, A.C. Mardan and others (2019 SCMR 599) & Zohra Bibi and another Vs. Haji Sultan Mahmood and others (2018 SCMR 762) and prayed for setting aside of Judgments dated 22.11.2014 and 11.02.2015 passed by learned Trial as well as Appellate Court, respectively.

6. Respondent also appeared in person to argue his case and submitted that the Petitioner is his close relative who persuaded him to join TIENS by investing the amount of Rs.24,500/- in the said company because he was desirous of becoming a four star member. The Respondent further stated that since, he did not has the amount of Rs.24,500/-, therefore, the Petitioner deposited the said amount in company's account through his own code. Respondent further submitted that he is willing to return the actual amount of Rs. 24,500/- as per judgment of Trial Court but the Petitioner has refused to accept the same and indulged in unnecessary litigation. He prayed for dismissal of the present civil revision.

7. Arguments heard, record Perused.

8. Record transpires that Petitioner and the Respondent are relatives having close association with each other, however, on the issue of loan of Rs. 24,500/-, bad taste developed between them, which lead to litigation against Respondent. During the course of trial proceedings, the Petitioner produced certain witnesses claiming to be the witness of lending of loan by the Petitioner recorded in the diary which was admittedly signed by the Respondent. The Petitioner on the pretext of non-return of loan by Respondent, filed civil suit and claimed the basic amount as well as damages including the cost of litigation aggregating to Rs.100,000/-, yet record reveals that the Petitioner was not able to prove the payment of litigation cost to the advocate as he himself appeared before the learned Trial as well as Appellate Court and even before this Court to argue his case and it has been categorically stated in the judgment dated 22.11.2014,

passed by the learned Trial Court that though the Petitioner has filed wakalatnama of an advocate, however, he has conducted the entire trial by himself and during the trial he did not produce the Advocate as a witness to whom he has paid the professional fee which should be the necessary witness to prove his contention regarding litigation expenses incurred by him. Thus, this Court is of the view that the Petitioner has failed to substantiate his claim of cost of litigation as throughout the proceedings from Civil Court to this Court the Petitioner is appearing in person to pursue his case. The case law relied upon by the Petitioner whereby the Hon'ble Supreme Court has awarded cost of litigation to the Appellants is distinguishable as in the case of Zohra Bibi and another Vs. Haji Sultan Mahmood and others (2018 SCMR 762), it was proved that the succession certificate was obtained by the Respondent fraudulently and in case of Mst Bibi Shah Ban (Deceased) through L.Rs. and others Vs. Land Acquisition Collector, A.C., Mardan and others (2019 SCMR 599), the cost of litigation was awarded along with the compensation to the land owners due to delay in payment of compensation by the Respondent within prescribed period of one year u/s 48-A of the Land Acquisition Act. Thus, both the cases have different set of facts and circumstances and are not applicable to the facts of the Petitioner's case.

9. In view of the above, this Court is of considered view that the concurrent findings of both the courts below do not suffer from any illegality or infirmity as based on sound reasoning and proper appreciation of evidence. Hence, titled Civil Revision, being devoid of any merit, is hereby dismissed.

(LUBNA SALEEM PERVEZ)
JUDGE

Adnan