

**JUDGEMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**W.P. No.428 of 2012**

*Dr. Raja Muhammad Kamran*

***Vs.***

*M/s Shaheer Constructions etc.*

*DATE OF DECISION: 23-02-2012.*  
*PETITIONER BY: Mian Abdul Razzaq, Advocate*  
*RESPONDENT NO.1 BY: Raja Ansar Abbas, Advocate*

**SHAUKAT AZIZ SIDDIQUI; J:** Brief facts, glean out from instant writ petition are that, petitioner and respondent No.1 entered into an agreement to construct and complete a portion of House No.4, Luqman Hakeem Road, G-6/3 Islamabad, vide agreement dated 23-12-2010. According to petitioner, some dispute arose between the parties, due to which respondent No.1, without performing his part of agreement of completing the construction work, left premises on 19-07-2011. On 29-07-2011, respondent No.1 filed suit for recovery of Rs.13,23,356/- with compound interest @ 14% till recovery and also claimed damages of Rs.10,00,000/- which was entrusted to Mr. Ameer Mukhtar, learned civil judge, Islamabad. Following prayer was made in the plaint.

*"In the view of the above, it is therefore, most respectfully prayed that;*

- i. A decree for recovery of remaining/outstanding amount of Rs.13,23,356/- alongwith with compound interest @ 14% till recovery may kindly be passed in favour of the plaintiff as against the defendant No.1 with cost of the suit.*
- ii. A decree for recovery of damages on account of stoppage of work @ Rs.10,00,000/- may kindly be passed in the favour of plaintiff as against the defendant No.1.*

*Any other relief which this learned court deems fit and proper may also be granted."*

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2. On the same date, i.e 29-07-2011, reader of the court after making initial report, presented the plaint before learned Presiding Officer, who passed the following order:-

” 29/07/11 کو نسل مدعی حارف.  
دعویٰ جدید ہے۔ 17 ج. اسٹریٹ ہوٹل۔ بمبئی بنام  
مدعا علیہم باخذ طلبا بن و (ف) فہرہ اسٹریٹ A.D. بنقر 11/9/15 جاری ہوئی۔  
مدعی کو اس فی فیس داخل کرے۔“

As above order indicates, no order on application for temporary injunction was passed rather, plaintiff was directed to deposit requisite court fee. On 30-07-2011, plaintiff moved an application before learned Civil Judge for withdrawal of suit which was allowed vide order of even date. Paragraph No.2 of application to withdraw the suit reads as under:-

” 2- یہ کہ سائل کو دعویٰ ہذا کی ضرورت نہ رہی ہے اور دعویٰ والس لینا  
حاجت ہے۔“

3. After passing of just two days of withdrawal of suit, respondent No.1 filed yet another suit with regard to same dispute on 02-08-2011 but this time it was given the subject of “**suit for rendition of accounts and permanent injunction**”. In the fresh/later suit, no reference was provided, with regard to filing of earlier suit and its withdrawal. Apparently, one of the object was to get it entrusted to some other learned civil judge which was achieved as suit was entrusted to Mr. Nadeem Anjum Mian, learned Civil Judge, Islamabad, who on the relevant date was on leave, therefore, application for grant of temporary injunction was placed before Mr. Mehmood Haroon Khan, learned Senior Civil Judge, who directed the parties to maintain “status quo”. On next date of hearing i.e 6th of August 2011, matter was again placed before the same learned duty judge, who allowed application for appointment of local commission, as even petitioner/defendants side raised no objection to the appointment. Resultantly, Sheikh Mushtaq, Executive Engineer, PWD was appointed local commission with the direction to inspect the spot in presence of the parties on 08-08-2011 and to prepare, detailed report regarding

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assessment of work already done on the site by plaintiff and submit it before court on 10-08-2011. However, local commissioner submitted his report on 18-08-2011 and learned civil Judge, adjourned the matter to 22-08-2011 for filing of objections, on report submitted by local commissioner and also for arguments on application for temporary injunction. On the said date, objections were filed on behalf of petitioner/defendant No.1 but for filing of objections of respondent No.1/plaintiff and for arguments on application for temporary injunction case was adjourned to 23-08-2011, on the said date objections were filed alongwith application u/o 26, rule 10(2) of CPC. (Matter kept on lingering and after exhausting 13 opportunities, application for review of order dated 23-09-2011 was moved on 26-09-2011 only for the reason that learned Civil Judge gave last opportunity for arguments on temporary injunction. Application for review was dismissed on 29-09-2011 and matter was fixed for arguments on application for grant of temporary injunction on 30-09-2011 but again it was adjourned to 01-10-2011 and thereafter to 04-10-2011).

4. Vide order dated.08-09-2011, matter was adjourned to 19-11-2011. On the same date, learned counsel for petitioner/defendant No.1 appeared and requested for posting the matter to any short date which was accorded and the matter was fixed to 10-09-2011. On the said date i.e 10-09-2011, learned counsel for plaintiff, Raja Ansar Abbass, Advocate withdrew his power of attorney, therefore, learned trial court was left with no option, except to issue notice to the plaintiff and posted the matter for 14-09-2011. Service of, notices could not be affected, therefore, court order for publication of proclamation in the Daily "Islamabad Times" for 22-09-2011. On the said date, one learned counsel appeared on behalf of plaintiff and make statement that he has no objection on acceptance of application for fixation of case to some early date. Learned trial court fixed the case on 23-09-2011 for arguments on application for temporary injunction but on the said date arguments were not advanced and the

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matter was adjourned to 26-09-2011, on the date so fixed, the application for review of order dated.23-09-2011 was moved which was fixed for reply of same and arguments for 28-09-2011 but it was again adjourned to 29-09-2011. Learned Civil Judge vide order dated.29-09-2011 dismissed the application of review and fixed the matter for arguments on application u/o 39 rule 1 & 2 CPC for 30-09-2011.

5. On 31-10-2011 application for transfer was moved before the District Judge, Islamabad with the prayer that suit pending before Mr. Nadeem Anjum Mian, learned Civil Judge may be transferred to any other court which request was allowed vide order dated.10-11-2011. Another revision petition against the order dated.22-09-2011 and 29-09-2011 was also filed before the District Judge which was entrusted to Mr. Kamran Basharat Mufti, learned ADJ. It is worth to mention here that sole cause of filing this revision was that application for early hearing was allowed. Revision petition was admitted vide order dated.04-10-2011 and proceedings before trial court were stayed till 10-10-2011. Learned Additional District Judge, Islamabad allowed the revision petition vide order dated 19-10-2011 on the statement of learned counsel for petitioner/defendant No.1 for granting one opportunity to submit written reply on application for early hearing. On 23-11-2011 yet another revision petition against the order dated.22-11-2011 was filed through which court rejected application on the ground that attorney of defendant No.1 is lunatic and fixed the matter for 24-11-2011 for arguments on application for temporary injunction. Learned Additional District Judge, Syed Wajhat Hussain vide order dated.17-12-2011 admitted the petition and restrained the trial court from deciding the application for temporary injunction. On 17-01-2012, learned counsel for petitioner/defendant No.1 appeared before court and raised the objection that, revision petition was not

maintainable on the ground that mandatory requirement of section 115 CPC were not met with. Learned ADJ directed the respondent No.1/plaintiff to annex all relevant documents and vide impugned order dated 20-01-2012, allowed the revision, hence the instant petition.

6. The learned counsel for petitioner submits that, revision petition was not maintainable as no documents were appended with the petition, which fact is being substantiated from this aspect that learned ADJ vide order dated.17-01-2012 directed the petitioner before him, for filing of the relevant documents. Learned counsel further submits that in the plaint, claim of Rs.35,75,541/- was made, whereas, value of the suit for the purpose of court fee and jurisdiction was fixed as Rs.13,23,356/- so that appeal/revision could have been filed before District Judge, whereas, value demanded that it should have been filed before the High Court. Learned counsel also submits that there was no need to decide the objections on report of local commissioner before order on application for temporary injunction. The learned counsel adds that, order impugned is arbitrary, illegal, beyond jurisdiction and against the mandate of law. The learned counsel for petitioner placed his reliance on 1991 MLD 1774, 1996 CLC 580, 2004 MLD 1107 and 2004 CLC 1229.

7. Conversely, learned counsel for respondent No.1 submits that since entire controversy revolves around the report of local commissioner, therefore, it was incumbent upon the trial court to decide the objections and in the light of same pass any order on the application for temporary injunction.

I have heard the learned counsel for the parties and perused the record annexed with the petition.

8. It is being observed with great concern that, conduct of respondent No.1 throughout the proceedings before the courts below remained highly



objectionable and totally unwarranted. The respondent No.1 did not mention the fact of withdrawal of earlier suit, when fresh suit was filed and right from there on effort was being made to obtain the restraining order and thereafter check the path of disposal of application on merits. The conduct of respondent No.1 is so disgusting that withdrawal of suit was made on 30-07-2011 on the ground that no cause of suit left but just after 48 hours filed the fresh suit by changing its subject and by concealing the fact that about same issue and between the same parties, earlier suit stand withdrew. The most concerning aspect is that both the suits were filed by the same learned counsel and during the pendency of later suit, he withdrew his power of attorney on 10-09-2011 but amazingly, transfer application and revision petition dated.30-10-2011 were also filed by the same learned counsel. It also transpires that said learned counsel again joined the proceedings before the trial court as counsel.

9. As mentioned in the facts that in the first suit stay was not granted but in the subsequent suit, vide order dated.02-08-2011 and thereafter till to date decision on application of temporary injunction could not have been made due to obnoxious conduct and stinking approach of respondent No.1. Perusal of different orders reveal this fact that, respondent No.1 made mockery of law and courts below acted in aid of such endeavours, instead of following the command of law, guidelines provided through National Judicial Policy, principle enunciated by the authoritative pronouncements of court of Apex and mandate of law. I have no hesitation in observing that transfer order of case was made without any reasonable cause and civil revision against early fixation of suit was also entertained without any lawful justification. It is well settled law, with the mandate of the dictums of superior courts of the country that courts are not obliged to exercise their discretion in favour of those litigants who

approach the courts with unclean hands, concealment of facts and dishonest intent.

10. The conduct demonstrated by the respondent No.1 throughout, speaks volume of his malafide, ulterior motives and cryptic approach to frustrate the judicial proceedings. He had been playing the game of hide and seek instead of paying respect to court of law and proceedings pending before it. In my view such type of litigants are responsible for causing delay in the early decision of the cases, pending before the courts, resultantly, eye brows are raised by the aggrieved party about the Judicial System and the Courts. Although, dynamic, observant and vibrant Institution of the Judiciary has been trying it's best to curb such type of practices and all humanly possible endeavours are being made for quick adjudication of the matters brought/pending before it. The mannerism of the respondent during entire proceeding remained dissolute, which fully established this fact that respondent No.1 aim and object was to linger on, rather trammel the proceedings on one pretext or the other.

11. The revision petition, order which has been impugned before this court was filed on 23-11-2011, admittedly documents as required were not appended with it, that's why on 17-01-2012 learned ADJ directed filing of documents that too on the pointation by the learned counsel for present petitioner. The procedure adopted by learned ADJ is not only novel, but besides the settled law.

It appears that learned ADJ, mis-lead himself by not adhering to mandatory requirement of law and authoritative pronouncements of court of apex in the case of Mst. BANORI VS. JILANI (deceased) through legal heirs etc. reported as PLJ 2011 SC 895, operative part of which is provided herein below:-

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"17. To show the required respect to these provisions by following them in letter and spirit, we direct that copies of this judgment shall be sent to the Registrars of all the High Courts who would place the same before the Hon'ble Chief Justices of the High Courts and also circulate them to all the learned Judges of the sub-ordinate Courts within their respective jurisdiction so that it is ensured:--

- (a) that steps are taken, in accordance with law, to order the applicants under Section 115 CPC to supply copies of the pleadings and documents where these pending applications were not accompanied by the same;
- (b) that steps are then taken, again in accordance with law, to return the records to the sub-ordinate Courts where the same had been summoned otherwise than through specific orders passed by the revisional Courts or where the same had been requisitioned not for indispensable reasons recorded in writing by the revisional Courts;
- (c) that in future, no applications filed under Section 115 are entertained unless accompanied by copies of the commanded documents and record;
- (d) that every sub-ordinate Court provides a copy of the decision sought to be revised to the person who so seeks, within the prescribed three days; and finally;
- (e) that the revisional Courts decide such like applications within six months and do so without calling the subordinate Court record unless it was indispensable to summon such a record;"

12. Moreover, it is nowhere provided in law that in all eventualities objections filed on report of local commission must be decided before decision on application for grant of temporary injunction. Learned Additional District Judge miserably failed to apply his judicial mind and observe the demeanour of parties, demonstrated during the proceedings. For decision on application for grant of temporary injunction any plaintiff/applicant is required to establish his prima facie case and other two ingredients of irreparable loss and balance of convenience. The courts are not supposed to seek and establish evidence for any party, for decision on application for grant of temporary injunction.

In this view of the matter, instant writ petition is allowed and impugned order dated.20-01-2012 is set aside and revision petition filed by respondent No.1 is dismissed with a direction to the learned trial court



to decide the application for temporary injunction, obviously after hearing both the parties but without granting further adjournments.

13. The conduct demonstrated by respondent No.1 before the courts below is so much malicious, unwarranted and unclean, which require serious action, therefore, I find it appropriate to impose cost of Rs.50,000/- upon him which respondent No.1/plaintiff will have to pay to the petitioner before the trial court on next date of hearing.

**(SHAUKAT AZIZ SIDDIQUI)**  
**JUDGE**

**APPROVED FOR REPORTING.**

"Waqar Ahmed"

Blue slip added!