

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

C.R. No.392-2019

Ghafoor Ellahi Awan

Vs.

Naveed Akhtar

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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11.12.2019

Mian Sohail Mahmood, Advocate for petitioner.
Mr. Naveed Akhtar Joya, Advocate for respondents.

Respondent filed a suit for recovery in the sum of Rs.8,00,000/- against the petitioner under Order XXXVII Code of Civil Procedure, 1908. The petitioner entered appearance and filed application for leave to defend, however, in connection with FIR registered by the respondents against the petitioner (FIR No.104 dated 26.03.2016 under section 489-F PPC, registered at P.S. Shalimar, Islamabad, he was arrested on 15.02.2018. On 18.02.2018, neither the petitioner nor his counsel entered appearance and he was ordered to be proceeded exparte. Subsequently, exparte judgment and decree was passed against the petitioner on 03.03.2018. The petitioner, upon his release from the prison, filed an application under Order XXXVII Rule 4 CPC for setting aside exparte judgment and decree, which was dismissed by learned trial court vide order dated 08.10.2019.

2. Learned counsel for the petitioner, *inter alia*, contended that absence of the petitioner was not deliberate and was owing to the fact that he was incarcerated in the case registered against him by the respondent. It was submitted that the

petitioner should be provided opportunity to defend his case.

3. Learned counsel for the respondent, *inter alia*, contended that petitioner, during course of proceedings before learned trial court, admitted liability and in this behalf, partial sum of Rs.30,000/- was also paid. It was contended that petitioner undertook to pay sum of Rs.2,00,000/- before a certain date, which he defaulted. It was submitted that in the referred backdrop, since decree was admitted and some payment was made hence there is no justification to set aside *exparte* judgment and decree.

4. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

5. The controversy, between the parties, is spelt out in the preceding paragraph therefore need not be reproduced.

6. It is an admitted position that during course of execution proceedings, the petitioner did appear before the learned executing court and undertook to make payment of decretal sum. In this behalf, order dated 08.10.2018 clearly recorded the undertaking given by the petitioner, whereby he agreed to pay the decretal amount in installments and also undertook to pay sum of Rs.2,00,000/- on or before 07.11.2018.

7. Moreover, the fact that petitioner was behind the bars, is no justification for his non-appearance of his counsel, who was under obligation to pursue the case. In the referred backdrop, learned trial court was justified in dismissing the application for setting aside *exparte* judgment and decree.

8. The order impugned, in the instant petition, does not suffer from any jurisdictional error warranting interference.

9. In view of above, instant petition is without merit and is accordingly dismissed.

(AAMER FAROOQ)
JUDGE

Zawar