

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**Civil Revision No.68/2019**

Federation of Pakistan through Secretary, Ministry of Railways, etc  
***Versus***  
Ijaz-ur-Rehman Qazi, etc

**Petitioners by** Mr. Binyamin Abbasi, Advocate.

**Respondents by** Sardar Nasir Mehmood and Ms. Naveeda Noor,  
Advocates for respondents No. 2&3.  
Mr. Arif Khan, Advocate on behalf of Raja Inaam  
Amin Minhas, Advocate.

**Date of Hearing** 24.04.2019.

**MOHSIN AKHTAR KAYANI J.-** Through this civil revision, the petitioners have assailed the judgment and decree dated 16.01.2018 passed by learned Civil Judge 1<sup>st</sup> Class, Islamabad (East) whereby, suit filed by respondent No.1 has been decreed and judgment dated 07.12.2018 passed by learned Additional District Judge (East) Islamabad, whereby Regular First Appeal filed by the petitioners against the said judgment and decree has also been dismissed.

2. Brief facts of the case are that respondent No.1 filed civil suit for declaration to the effect that he is owner in possession of plots No.298 & 299 measuring 20' x 30' each alongwith superstructure constructed thereon in Intelligence Bureau Cooperative Housing Society, Islamabad Khasra No.1684/111 Revenue Estate of Lohi Bher, Islamabad with permanent injunction that the petitioners have no right to interfere in the said land nor they are allowed to demolish the constructed commercial unit.

3. Learned counsel for the petitioners contends that the petitioners being Pakistan Railways are aggrieved with the construction raised by

respondent No.1 as the construction was made on the land belonging to Pakistan Railways which was encroached upon by the Intelligence Bureau Cooperative Housing Society, Islamabad. Petitioners issued a notice for illegal construction which was assailed by respondent No.1 through civil suit. Demarcation report was also submitted by the revenue authorities in favour of petitioners but all these aspects have not been considered by the learned trial Court as well as learned first Appellate Court. Learned counsel further contends that during the proceedings of suit, learned trial Court committed error while passing the order dated 08.01.2018, when suit was fixed for arguments on application under Order VII Rule 11 CPC but due to non-appearance of petitioners, ex-parte proceedings were initiated in the main case and within four days, decree was passed. Learned counsel further contends that learned trial Court had to decide the application under Order VII Rule 11 CPC which was fixed for said date but order dated 08.01.2018 has been passed due to misconception and petitioners have not been given due opportunity of hearing.

4. Conversely, learned counsel for respondent No.1 contends that respondent No.1 was allotted plot by the Intelligence Bureau Cooperative Housing Society, Islamabad (respondents No.2&3) and after approval of site plan by the competent authority, he constructed commercial plaza in the year 1998. Learned counsel further contends that petitioners as well as respondents No.2&3 have no right or title in the said land and in May, 2001 petitioners issued a notice which was assailed by respondent No.1 by filing civil suit. Learned counsel further contends that construction has been made by the individuals in the entire society but petitioners did not raise any objection at the time of raising construction.

5. Similarly, learned counsel for the Intelligence Bureau Cooperative Housing Society, Islamabad contends that plots were allotted to respondent No.1 and he raised construction in accordance with law and no illegality has been observed, even land claimed by the petitioners is entirely different and petitioners have no right or interest in the land claimed by them, therefore, their actions are illegal.

5. Arguments heard, record perused.

6. From the perusal of record, it has been observed that respondent No.1/Ijaz ur Rehman claims that he was allotted plots No.298 & 299 by the Intelligence Bureau Cooperative Housing Society, Islamabad and was given possession through letter Ex.P2 whereafter, he got due approval from the competent authority and constructed plaza on the said land 20 years ago and any notice of encroachment is illegal.

7. The suit filed by respondent No.1 was contested by the petitioners, however, during the proceedings, petitioners filed application under Order VII Rule 11 CPC on 27.04.2011, whereafter suit was dismissed for non-prosecution on 24.09.2014 and after considerable delay, suit was restored on 17.06.2015, however, application under Order VII Rule 11 CPC was kept pending, finally matter was fixed for arguments on the said application for 08.01.2018 but learned counsel for petitioners failed to appear before the Court due to which, ex-parte proceedings were initiated. Entire controversy revolves around the said order which is reproduced as under:-

*"Today the case was fixed for arguments on an application U/O 7 rule 11 of CPC by the defendant. Despite keeping the case pending till last hours, no one appeared on behalf of defendant, therefore ex-parte proceedings are hereby initiated against the defendant. Now to come up for the ex-parte evidence of the plaintiff on 12.01.2018."*

Above mentioned interlocutory order clearly spells out that on 08.01.2018 case was fixed for arguments on application under Order VII Rule 11 CPC but defendants/present petitioners were absent, as a result whereof, ex-parte proceedings were initiated by learned trial Court immediately converting the proceedings into second phase for recording of ex-parte evidence of plaintiff.

8. The principals for initiating ex-parte proceedings have been referred in Order IX Rules 6,10&11 CPC, however matter was fixed for arguments on application under Order VII Rule 11 CPC. Learned trial Court at the most could dismiss the application filed by any of defendant, who failed to appear and then shift the proceedings on main suit, however in this case due to absence of defendants/petitioners learned trial Court directly initiated ex-parte proceedings without passing any proper order on the application under Order VII Rule 11 CPC which is a technical fault in the entire proceedings. As such order dated 08.01.2018 is contrary to law as the proper method to resolve the issue is to dismiss the application under Order VII Rule 11 CPC due to non-prosecution but no such order was passed.

9. While exercising jurisdiction in terms of section 115 CPC, this Court is equipped with powers to rectify all those wrongs, illegalities or irregularities in the proceedings of suit on three grounds i.e.

- “(a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.”

Above referred powers give a wide scope to the Revisional Court to look into the procedural illegality which resulted into exercise of jurisdiction not vested by the Court and in this case, learned trial Court while

passing impugned order has exercised the jurisdiction by adopting wrong procedure which rendered the subsequent passing of ex-parte judgment and decree and other superstructure illegally.

10. In view of above, learned trial Court has initiated ex-parte proceedings without deciding the fate of application under Order VII Rule 11 CPC which has its technical significance on the question of maintainability of the suit which has been ignored by the learned trial Court.

11. Besides the above referred legal questions, I have also gone through the concurrent findings of learned Courts below, whereby learned trial Court has passed the decree without considering the main question of suit in which plaintiff/respondent No.1 is claiming declaration of his allotted plots No.298 & 299 by the Intelligence Bureau Cooperative Housing Society, Islamabad and his main grievance is against Pakistan Railways, who have issued notice for encroachment. Surprisingly, the effect of notice as of main cause of suit was referred in para-11 of the plaint whereby, notice dated 24.05.2001 was referred alongwith apprehension that Pakistan Railways might demolish constructed portion but respondent No.1 has not put any serious effort to justify that land claimed by Pakistan Railways has nothing to do with the allotted plots of respondent No.1 which were allotted by the Intelligence Bureau Cooperative Housing Society, Islamabad, therefore, this Court is of the view that both the Courts below despite passing ex-parte decree have not appreciated and answered the core question as to whether respondent No.1 is owner in possession of suit plots or made construction upon the land of Pakistan Railways or land belonging to the Intelligence Bureau Cooperative Housing Society, Islamabad.

12. I have gone through the entire evidence which shows that only respondent No.1 appeared through special attorney and no witness of record of the Intelligence Bureau Cooperative Housing Society, Islamabad, revenue record or the record of land of Pakistan Railways has been produced through which it could be proved that said plots were clear and Pakistan Railways has nothing to do with the same, therefore, in my view both the Courts below have not appreciated the evidence in its true perspective even procedural illegality has been committed by learned trial Court in order dated 08.01.2018, when ex-parte proceedings were initiated. Even otherwise, core question requires to be probed thoroughly by way of evidence and if said land has been encroached upon by the Intelligence Bureau Cooperative Housing Society, Islamabad, said act could not be protected under the garb of ex-parte decree, therefore, concurrent findings of Courts below are illegal, hence, judgments and decrees passed by learned trial Court as well as learned 1st Appellate Court are hereby **set-aside** and matter is **remanded** to learned trial Court at the stage of arguments on application under Order VII Rule 11 CPC with the direction to learned trial Court to decide the matter in accordance with law by calling evidence of revenue record, Pakistan Railways and other departments and to resolve the question of encroachment in order to save the rights of parties. Learned trial Court seized with the matter is also directed to decide the suit on or before 31.12.2019 under intimation <sup>to</sup> this Court.

13. Besides the illegalities observed by this Court another important aspect which comes into limelight is the lethargic conduct of Pakistan Railways officials, who have not shown their interest to safeguard the said land, therefore, office is directed to transmit copy of this judgment

to the General Manager, Pakistan Railways as well as the Federal Minister for Pakistan Railways to look into the affairs of officials and to ensure appropriate measures for legal protection of state land including participation in legal proceedings in an active manner.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE** /

Imran

Announced in open Court on 06.05.2019.

**JUDGE**