

**JUDGMENT SHEET.**

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

**Civil Revision No. 197/2013.**

**Muhammad Ramzan Ashraf**

*Versus*

**Biwater International Limited and another.**

Petitioner by: Ch. Muhammad Asad Raan, Advocate.

Respondents by: Nemo.

Date of Decision: 06.07.2020.

**MOHSIN AKHTAR KAYANI, J:-** Through this Civil Revision, the petitioner has assailed the concurrent findings of learned Civil Court, whereby suit filed by the petitioner was dismissed vide judgment & decree dated 09.03.2010, which was maintained by the learned Appellate Court vide judgment & decree dated 26.03.2013.

2. Brief facts referred in the instant civil revision are that petitioner Muhammad Ramzan Ashraf allegedly entered into consultancy agreement dated 12.10.2000 with respondent No.2/Water Technology International Limited for rendering tax consultancy services to manage and obtain letter of clarification (LOC) from CBR and he was given assurance that if the said task would be accomplished, his consultancy fee Rs.1.5 Million will be paid to him on the assurance of respondent No.1 through their authorization letter dated 12.10.2000. The respondents have not paid the claimed amount as a result whereof petitioner filed the suit for recovery of Rs.1.5 Million as fee with mark up @ 15% and special cost of Rs.1 Million. The suit was contested by defendants, who acknowledged the agreement but on different terms, however, respondents/defendants have

been proceeded *ex-parte* by the trial Court and learned trial Court after recording the evidence of plaintiff, dismissed the suit vide judgment & decree dated 09.03.2010, which was further maintained by the learned Appellate Court. Hence, this civil revision.

3. Learned counsel for the petitioner contends that both the Courts below have not given thoughtful consideration to the admissions made by the respondents in written statement to the execution of agreement dated 12.10.2000 and as such there is no need to prove the contents of the agreement which was placed by the petitioner on record as Mark 'A'; that both the Courts below have misread the evidence and committed jurisdictional error while dismissing the suit in violation of settled principles of law.

4. Respondents have been proceed against *ex-parte* vide order dated 13.02.2020 after publication of notice in newspaper Daily Pakistan (Urdu).

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioner being plaintiff filed suit for recovery of Rs.1.5 Million on the basis of agreement of service dated 12.10.2000 with respondent No.2, whereby he has to provide consultancy service to the respondent company against the total fee of Rs.1.5 Million. The plaintiff has to obtain letter of clarification from CBR qua the said company under the tax laws. The respondents have contested the suit and filed their written statement whereby they have taken specific stance that the agreement was time bound which was not performed within the due time by the petitioner and he has failed to obtain letter of clarification from CBR which was urgently required at the relevant time. It is specifically written in the written statement that "this agreement is valid for a period of thirty days from the date of this agreement" and the other important condition is "25% to be paid upon satisfactory final draft of the LOC. 75% to be paid upon delivery of the Original LOC in

Islamabad". However, the petitioner has failed to abide by the said terms within notified period, resultantly matter could not be settled, however, respondents have claimed their setoff amounting to Rs.1,02,83,243/- but surprisingly the petitioner has not refuted the claim of respondents separately, who have been proceeded *ex-parte* by the trial Court.

7. The petitioner has recorded his evidence through PW-1 & PW-2, however, evidence reflects that petitioner has failed to submit original agreement on record, nor able to justify the terms as claimed by him in the evidence, nor he has produced letter of clarification on record to substantiate his *prima-facie* case that he has achieved the requisite objective of agreement which is very basis of the suit.

8. The evidence further confirms that terms & conditions of the agreement have to be proved independently in terms of Article 17 & 74 of the *Qanun-e-Shahadat* Order, 1984, even he has not produced a single witness from the tax department to prove that he ever had applied for issuing of certificate as per agreement with respondents. PW-1 in his evidence admitted that he is tax advisor and specifically admitted that:-

ہمارا اقرار نامہ صرف CBR کیلئے تھا۔ CBR نے exemption دے دی تھی اور اقرار نامہ اس حد تک درست ہے کہ میں نے exemption letter وصول کر کے ذاتی طور پر مدعا علیہ کو نہ دیا ہے۔ از خود کہا کہ اس letter کے جاری ہونے کی بابت مطلع کرایا تھا۔ میرے پاس اس بابت کوئی ثبوت موجود نہ ہے جو ظاہر کرے کہ مدعا علیہ کو exemption ملی ہے۔

9. In view of above admission by the petitioner it is apparent that agreed terms have not been complied with by the petitioner, therefore, there is no question of receiving amount/fee against services. I have gone through the judgment of learned trial Court, whereby learned trial Court has rightly adjudicated upon the issue No.1 and declared the default of the petitioner, whereby petitioner has failed to discharge his onus through positive evidence. I have not seen any jurisdictional error in both the judgments, which have been

passed after due appreciation of mind, therefore, instant civil revision is not maintainable and the same is hereby *dismissed*.

(MOHSIN AKHTAR KAYAN)  
JUDGE

Zahid