

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

1. Civil Revision No.115 of 2016

2. Civil Revision No.116 of 2016

Syed Shah Shaukat

Versus

M/s Koral Enterprises

Petitioner by: Mr. Tariq Mehmood Khalid, Advocate

Respondent by: Ms.Shabana Murad Shah, Advocate

Date of Hearing: 19.02.2020.

FIAZ AHMAD ANJUM JANDRAN, J.- This single Judgment shall decide both captioned civil revision petitions having common subject matter and arising from same impugned order.

2. Precisely, facts relevant for the disposal of instant civil revision petitions are that respondent/plaintiff {M/s Koral Enterprises} filed a suit under Order XXXVII Rule 2 CPC against the petitioner for recovery of Rs.100,00,000/- (Rupees ten million) before this Court on 29.04.2009 due to having pecuniary jurisdiction at that time. Subsequently, it was transferred to the learned District Judge where on 06.10.2010, petitioner/ defendant filed application for leave to appear and defend; its reply was submitted on 11.02.2010; thereafter petitioner was proceeded against *ex-parte* vide order dated 30.06.2010. It is evident from the record that the suit was dismissed due to non-prosecution on 27.02.2013 and subsequently on application for restoration filed by the respondent, it was restored vide order dated 12.04.2013. After restoration, defendant/petitioner was again summoned through ordinary mode as well

as through proclamation, vide order dated 14.05.2013 and on the next date 30.05.2013, he was once again proceeded against ex-parte. The learned Trial Court after recording ex-parte evidence decreed the suit vide (ex-parte) Judgment & Decree dated 03.07.2013. Subsequently, in execution proceedings, on 24.04.2015, petitioner filed application for setting aside the two orders dated 30.06.2010 & 30.05.2013 and ex-parte Judgment and Decree dated 30.07.2013. The said application was duly contested by the respondent and the learned ADJ Islamabad-West dismissed the same vide order dated 27.02.2016, now instant civil revision petitions have been filed with prayer for setting aside orders 30.06.2010, 30.05.2013, Judgment & Decree dated 30.07.2013 & Order dated 27.02.2016.

3. Learned counsel for the petitioner contends that suit of the respondent was time barred; no prescribed notice under Order XXXVII CPC has ever been issued to the petitioner; that all documents filed on behalf of the petitioner were fictitious. Further contends that petitioner never appointed any Advocate/counsel to file leave to appear and defend in the matter; neither he appeared in the Court nor his counsel appeared to represent him. He appeared at the time of filing of application on 24.04.2015 for setting aside ex-parte orders, judgment and decree. It is prayed that as the impugned proceedings were conducted at the back of the petitioner without adopting due process, therefore, under the principle of natural justice and fair trial, he should be given an opportunity to rebut the claim of respondent and then to decide the case on merits. Learned counsel placed reliance upon case laws

reported as PLD 1976 K 481, PLD 1990 Peshawar 71, 1991 CLC 1243, 1992 CLC 1937, 1994 MLD 1117, 2003 CLC 1233, 2004 YLR 416, 2007 CLD 1633, 2012 SCMR 1235, 2015 YLR 163, PLD 1985 SC 153, PLD 2002 SC 403 and 2002 CLC 899.

4. Learned counsel for the respondent argued that the suit filed in the year 2009, which was a summary suit, was decreed after more than four years on 30.07.2013; that proper procedure was adopted to procure attendance of petitioner who, once appeared and submitted application for leave to appear and defend, thereafter absented himself from the proceedings and was proceeded against ex-parte. According to the learned counsel, once again defendant was summoned and on his failure to appear, proceeded against ex-parte. It is added that in order to cause attendance of the petitioner/defendant, the learned trial court adopted all modes. Further contends that petitioner has not been able to point out any legal or jurisdictional defect in the impugned proceedings, therefore, revision petitions are liable to be dismissed.

5. Heard the learned counsel for the parties and examined the record with their able assistance.

6. Record annexed with the revision petition reveals that petitioner participated in the proceedings by filing application for leave to appear and defend the suit. Written reply of said leave to appear and defend was filed and thereafter petitioner absented himself from the proceedings. Resultantly, impugned ex-parte orders were passed which culminated into final ex-parte judgment and decree. The contention of the petitioner regarding non-appearance before the learned trial Court and non-appointment/engagement of any

counsel is contrary to record because there is not a single document available on record which could substantiate the stance taken by the petitioner. There are applications filed by learned counsels on behalf of petitioner for leave to appear and defend and setting aside ex-parte proceedings. Denial of the petitioner regarding non-engagement of said counsels is not supported by record because there is no complaint/application or any other instrument through which it could be substantiated that he applied to any forum or even to the Court that he did not appoint such counsel for filing of said applications along with leave to appear and defend the suit. The plea of the petitioner also loses its force when documents annexed with the application for leave to appear and defend the suit reveal that they are private documents in which signatures and entries, contents are in respect of business and other matters of the petitioner with the respondent. These documents had been filed along with said application for leave to appear and defend. The question that if said counsels were not appointed by the petitioner then how said private documents of the petitioner were brought on record. This judicial record speaks otherwise, while authenticity is attached to the same and absence of the petitioner from the proceedings seems to be intentional and to delay/defeat the outcome of the ex-parte judgment and decree which had been passed on the basis of the negotiable instrument and matter is lingering on for the years due to these frivolous applications.

7. As far as the question as to whether the proceedings are to be governed by Order XXXVII Rule 4 of the Civil Procedure Code or Order IX Rule 13 of the

CPC is warranted because in both the eventualities, petition of the petitioner before the learned Trial Court for setting aside ex-parte judgment and decree could not be allowed as neither special circumstances are existed, which is a prerequisite under Order XXXVII Rule 4 CPC nor sufficient cause to the satisfaction of Court had been advanced as required under Order IX Rule 13 CPC. In this respect, I am benefited by the case law reported as **2006 SCMR 631 titled Shahid Pervaiz alias Shahid Hameed Vs Muhammad Ahmad Ameen & 2018 CLC 1737 titled Kareem Bakhsh Vs Aslam Khan.**

8. Record shows that petitioner after entering his appearance in the proceedings by filing of application for leave to appear and defend, has absented himself from the proceedings. Therefore, application of the petitioner was rightly rejected by the learned ADJ. The case law relied upon by learned counsel for the petitioner is of no help to the petitioner due to having distinct facts and circumstances.

9. In view of the above, both the civil revision petitions being devoid of merits are **dismissed**.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

M.A. Raza

Announced in open Court on **11.03.2020.**

JUDGE