

## **JUDGMENT SHEET.**

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

**Civil Revision No. 177/2018.**

**Zia ur Rehman**

***Versus***

**Additional District Judge (West) Islamabad, etc.**

Petitioner by: Hafiz Asif Ali Tamboli, Advocate.

Respondent No.3: In person.

Date of Decision: 07.09.2020.

**MOHSIN AKHTAR KAYANI, J:-** Through this Civil Revision, the petitioner has assailed the judgment & decree dated 21.04.2018, passed by learned Additional District Judge (West), Islamabad and order dated 03.03.2018, passed by learned Civil Judge, Islamabad, whereby application for setting aside *ex-parte* decree dated 27.07.2017 in terms of Order IX Rule 13 CPC filed by petitioner was dismissed and maintained by the first Appellate Court.

2. Learned counsel for the petitioner contends that respondent No.3 filed suit for recovery of Rs.1,68,913/- on account of outstanding rent, utility bills and damages, which was *ex-parte* decreed vide judgment & decree dated 27.07.2017 and petitioner filed application for setting aside of said decree mainly on the ground that no service was effected upon him, even not a single service report is available through which it could be confirmed that notice of the said suit was served upon the petitioner, however, service report which was made basis of the *ex-parte* decree is silent qua the acknowledgment of the petitioner rather it was received by some of the staff member of Islamic University where petitioner was working as lecturer; that address given in the rent agreement was available with

respondent but despite knowing that fact respondent has not referred the said address in the suit for recovery for the purpose of service; that controversy as to whether service was effected or otherwise could not be settled without recording of evidence.

3. Conversely, respondent No.3 in person states that he will argue his case as he could not afford counsel.

4. Be that as it may, he was allowed to argue his case, whereby he states that petitioner was served with notice at his university address, even shipment delivery report confirmed that notice was served upon him on 28.11.2016, which was made basis of the *ex-parte* decree; that petitioner has intentionally not appeared before the Court and his outstanding rent as well as utility bills have to be recovered from the petitioner by all means. Respondent No.3 has taken a categorical stance that matter may be decided on merit subject to protection of his rights.

5. Arguments heard, record perused.

6. Perusal of record reveals that respondent filed suit for recovery of Rs.1,68,913/- on account of outstanding rent, utility bills and damages against appellant who was tenant in House No.180, Street No.160, Sector G-11/1, Islamabad and possession was obtained by respondent through eviction proceedings vide order dated 16.09.2016, passed by Rent Controller, Islamabad whereupon the possession was managed through Bailiff of the Court. Respondent after obtaining the possession of leased premises filed suit for recovery of Rs.1,68,913/- on account of outstanding rent, utility bills and damages against the petitioner while referring his address "Faculty of Shariah & Law, Faculty Block No.1, International Islamic University (IIUI) Sector H-10 Islamabad, Resident of House No.10, Street/Gali No.3, Upper Storey, Faisal Colony, Near Gulzar-e-Quaid, Airport Road, Rawalpindi". However, notices

were issued through registered post and TCS on different dates of hearing but notices could not be served directly upon the petitioner, however, one shipment delivery report dated 28.11.2016 reveals that shipment was received by Zia ur Rehman/petitioner, which was made basis of *ex-parte* decree. The petitioner after having knowledge of pending proceedings filed application for setting aside of *ex-parte* decree vide application dated 02.12.2017 on the ground that he was not residing at the given address, even notice was not served in Islamic University directory upon the petitioner. The application was contested by respondent and same was dismissed by the trial Court vide order dated 03.03.2018, which was upheld and maintained by the first Appellate Court.

7. I have gone through the entire record with the able assistance of respondent who also conceded that shipment delivery report was clear that notice was served upon petitioner although signature available upon delivery sheet if seen with the naked eye in comparison with the signature available of the petitioner on the application, affidavit as well as on present petition in terms of Article 84 of the *Qanun-e-Shahadat* Order, 1984, same are different and as such this dispute of service of notice could not be resolved without recording of evidence. Trial Court as well as first Appellate Court has not considered this aspect rather proceeded against petitioner which in fact is the irregularity and illegality of procedure at the same time, whereas it is trite law that disputed facts could only be resolved by recording of evidence. Reliance is placed upon 2010 CLD 876 (Eli Lilly and Company through authorized Signatory Vs. ATCO Laboratories (Pvt) Limited through Chief Executive), 2003 SCMR 1261 (Amir Bibi Vs. Muhammad Khurshid). However, such procedure has not been adopted, therefore, the powers conferred under Section 115 CPC has to be exercised in terms of supervisory/revisional jurisdiction to correct the illegality committed by

the lower courts. When confronted with above aspects, respondent states that instant petition be settled on merit subject to cost with direction.

8. In view of position discussed above as well as conceding statement of respondent, instant civil revision is allowed, the *ex-parte* decree dated 27.07.2017 is hereby set aside alongwith orders dated 03.03.2018 & 21.04.2018. Hence, suit is deemed to be pending subject to payment of cost of Rs.10,000/- to be paid to respondent No.3 with direction to the petitioner to submit bank guarantee of Rs.1,68,913/- (disputed amount) before the trial Court which remain valid for period of one year. Learned trial Court seized with the matter is directed to decide the same within period of six (06) months.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Zahid