

ORDER SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Civil Revision No.100/2019

Yasir Hussain
VERSUS
Usama Sharif

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
	01.7.2019.	Mr.Muhammad Ali Rana, Advocate for the Petitioner. Mr.Tariq Mehmood Qureshi, Advocate for respondent.

Through this Civil Revision, the Petitioner has assailed the order dated 15.3.2019 passed by the Additional District Judge, Islamabad (West) whereby his application for leave to appear and defend the suit has been dismissed being time barred.

2. Learned counsel for the petitioner contends that the ex-parte proceedings were initiated against the petitioner on 30.7.2016 and in consequence thereof ex-parte decree was passed on 14.11.2016 whereby petitioner has filed the application for setting aside ex-parte decree on 14.2.2017 the same was allowed vide order dated 10.11.2018 and petitioner was directed by the Court of Additional District Judge, Islamabad (West) to submit application for leave to appear and defend the suit and adjourned the matter to 23.11.2018. It is lastly contended that petitioner in compliance of the direction passed by the trial Court submitted the application for leave to appear and defend the suit on 23.11.2018 but the trial Court rejected the same on the ground that same is time bared which is in violation of its on order.

3. Conversely, learned counsel for the respondent contends that application for leave to appear and defend the suit could only be filed within a period of 10 days from the date of service of notice under Order XXXVII Rule 2 CPC and in this case this period started from the date of order i.e 10.11.2018 passed on the

application for setting aside ex-parte judgment and decree dated 14.11.2016.

4. Arguments heard. Record perused.

5. Perusal of record reveals that the petitioner has filed an application for setting aside ex-parte judgment and decree dated 14.11.2016 passed by the Court of Additional District Judge in terms of Order 37 CPC whereby the said application was allowed vide order dated 10.11.2018 and Petitioner was directed to submit the application on 23.11.2018 for leave to appear and defend the suit and when the petitioner filed his application same was rejected being time barred. The Petitioner has taken the plea that he has complied with the order of the trial Court in which he was allowed to submit application on 23.11.2018, however, the law referred in terms of Order XXXVII CPC provides 10 days time from the date of knowledge and service of summon in suit under Order XXXVII CPC and in this case when the petitioner himself resorted course of action where he has applied setting aside ex-parte judgment and decree dated 14.11.2016 passed by the Additional District Judge, Islamabad (West), therefore, the petitioner cannot raise objection that his time limitation to submit application for leave to appear and defend the suit be extended for 13 days. The law provides the limitation for submission of application for leave to appear and defend the suit for 10 days which started from the date of service or from the date of direction passed by the Court and in this case the time period of 10 days started from the Order dated 10.11.2018 passed by the trial Court as such application filed by the petitioner is apparently time barred and petitioner cannot fight behind the order of the trial Court as the suit for recovery of Rs.5,00,000/- filed by the respondent is pending. Even ex-parte judgment and decree was passed on 14.11.2016. The petitioner filed his

application for setting aside ex-parte judgment and decree on 14.2.2017, hence he cannot be claimed that he was not aware of entire proceedings. Instant application is misconceived. No illegality has been observed in the process of the trial Court, therefore, same is hereby **dismissed**.

(MOHSIN AKHTAR KAYAN)
JUDGE

M.S. ZAKI