

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
AT GILGIT

Before:- Mr. Justice Dr. Rana Muhammad Shameem , Chief Judge.
 Mr. Justice Javed Iqbal, Judge.
 Mr. Justice Shabaz Khan, Judge.

C.MISC.NO.33/2014 IN C.P.LA.NO.57/2014

Rehman Manzoor s/o Manzoor Hussain r/o Kohistan Sitara Goods Mohin Pora City Sadar Road Rawalpindi at present Kohistan Sitara Goods Yadgar Chowk Skardu.

Petitioner

VERSUS

1. Amir Shahzad s/o Rahimullah Khan r/o Kohistan House Jafri Muhalla Yadgar Chowk Sukamaidan Skardu.
2. Excise & Taxation Officer Motor Registration Authority District Lasbila Province Baluchistan.

Respondents

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF GILGIT-BALTISTAN (EMPOWERMENT & SELF GOVERNANCE) ORDER 2009. AGAINST THE IMPUGNED EX-PARTE JUDGMENT/DECREE PASSED BY THE LEARNED DIVISION BENCH CHIEF COURT GILGIT-BALTISTAN DATED 05-05-2014 AND EX-PARTE JUDGMENT/DECREE PASSED BY THE LEARNED CIVIL JUDGMENT FIRST CLASS SHIGAR CAMP AT SKARDU IN CIVIL SUIT NO.21/2011 AND 34/2010 ON 09-04-2013 MAY GRACIOUSLY BE SET ASIDE BY CONVERTING THIS PETITION FOR LEAVE TO APPEAL INTO APPEAL AND APPEAL MAY GRACIOULY BE ACCEPTED TO MEET THE ENDS OF JUSTICE.

Present:-

Malik Shafqat Wali, Sr, Advocate for the petitioner.
 Mr. Amjad Hussain, Advocate for the respondents.
 Mr. Rehmat Ali, AoR.

Date of Hearing:- 31-03-2016.

JUDGEMENT

Javed Iqbal, J....., This petition for leave to appeal has been preferred by the petitioner namely Rehman Manzoor, calls in question the validity of ex-parte judgment/decree of the learned

Division Bench of Chief Court Gilgit-Baltistan dated 05-05-2014, passed against the appellant in civil suit No. 21/11 and 34/10.

2. The brief facts of the case is that, the respondents/plaintiff, namely Amir Shahzad etc filed a Civil Suit No. 21/118 (34/10) before the Civil Judge Skardu for declaration/possession, and recovery of Rs. 3000/- (three thousand) per day till realization of decree in respect of truck bearing registration No. LSC-1990, Chasis No. FD HLA-26407, engine No. HO7DA-58869, Model 1991 HINO. The petitioner/defendant through his written statement filed on 07-03-2011, denied the claim of plaintiff stating therein that, he has bought the suit truck from one Allah Muhammad through one Naseem Hassan in year in year 2002, for consideration of Rs- 700,200/- and further spent Rs- 800,000/- for its repair and since then the suit vehicle (truck) is in his possession.

3. That the case was fixed by the trial court for PW's on 08-03-2012, but due to absence of attorney and counsel of present petitioner/defendant, the above case has preceded ex-parte by trial court, next date has fixed by the trial court for statements of PW's ex-parte on 28-03-2012. The learned Trial Court, have recorded two (2) PW's ex-parte. Over the divergent pleadings of the parties, ten (10) issues have been framed by the trial court. On 04-09-2013, the learned trial court has announced his judgment/decree ex-parte with detailed discussion on each and every issue.

4. Feeling aggrieved by the ex-parte proceedings, the petitioner/defendant filed revision petition before the District Judge Skardu on 4th April 2012, the revision petition of petitioner/defendant, dismissed by the District Court Skardu on 17-05-2012, with the observations that the conduct of petitioner/defendant remain un-cooperative with the court, continuously despite chances given to him. The petitioner/defendant

namely Rehman Manzoor filed writ petition against the order/judgment passed by the learned District Judge Skardu on 09-06-2012. The learned Hon'ble Judges of Chief Court Gilgit-Baltistan had dismissed the writ petition No. 05/2012 filed by the petitioner/defendant with the observations, that the petitioner/defendant has failed to make a case of "Coram non-judice" or void order on 17-08-2013.

5. The record reveals that the appellant/defendant further waiting till the decision dated 04-09-2013 of the trial court, in which ex-parte proceedings merge into ex-parte decree. Feeling aggrieved the petitioner/defendant No.1 filed Civil 1st Appeal No. CFA. 6/2013 before the Hon'ble Chief Court Gilgit-Baltistan on 02-10-2013 against ex-parte decree passed by the trial court Shigar camp at Skardu in favour of the respondents/plaintiffs against the petitioner/defendant on 04-09-2013, which was dismissed by the Hon'ble Division Bench of Chief Court Gilgit-Baltistan on 05-05-2014.

Feeling aggrieved by the judgment/order passed by the Hon'ble Division bench of Chief Court Gilgit-Baltistan, the petitioner/defendant filed the instant petition for leave to appeal before this August Court on 15-05-2014.

6. The learned counsel for the petitioner/defendant, during course of arguments, before this August Court, frankly contended, that it is utmost and professional duty of counsel to advice his client rightly and legally, but the previous counsel of petitioner/defendant No.1 intentionally and malafidely given ill-advice to the petitioner/defendant and instead of advice to put his appearance before the learned trial court after ex-parte proceeding on subsequent date and without advice the petitioner/defendant No.1, he filed the revision petition thereafter filed writ petition against ex-parte order, he also contended, that petitioner/defendant No.1 had provided a medical certificate about his ailment but the counsel have not appended medical documents about ailment willfully, lastly he

contended, that procedure adopted by the previous counsel for the petitioner/defendant No.1, were wrong and after unconditional withdrawal of first suit by respondents/plaintiffs, second suit is not maintainable due to above reasons, the ex-parte decree is liable to be set aside, the learned counsel for the petitioner also urged for substantial justice.

7. On the other hand the counsel for the respondents/plaintiffs, contended, that all procedure adopted by the counsel for the petitioner/defendant are wrong and illegal. He contended that ill-advice of the counsel is having no ground for setting aside ex-parte decree, he also contended, that for setting aside ex-parte decree the right for petitioner/defendant to file a petition before the learned trial court under **Order 9 Rule 13, Civil Procedure Code**, the ex-parte proceedings merged into ex-parte decree and gain finality.
8. We have heard exhaustively, the arguments advanced by the learned counsel for the respective parties at length, and also perused the relevant record as well as impugned judgments/orders passed by the learned trial court and learned Chief Court Gilgit-Baltistan with full care and caution, the learned counsel for the petitioner/defendant conceded, that, due to adopt of wrong procedure for setting aside ex-parte decree, it is well settled law that, **"LEGES VIGILANTIBUS NON DORMIENTIBUS-SUBVERNIUNT"** **the law aids those who keep watch not those who sleep.**

The ill advice of counsel is no ground for setting aside ex-parte decree. The procedure laid down in Civil Procedure Code for setting aside ex-parte proceedings is Order 9 Rule 6 &7, which reproduce as under,

Order 9 rule 7 C.P.C,

"Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance. Where the Court has adjourned the hearing of the suit ex parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court

directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance".

For setting aside ex parte decree the procedure available in C.P.C is order 9 rule 13, which reproduce as under,

SETTING ASIDE DECREE EX PARTE

"Setting aside decree ex parte against defendant.- (1) in any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court for that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Order 9 rule 13, for setting aside ex-parte decree, while he filed a revision petition and then writ petition, lastly he filed an appeal for setting aside ex-parte decree, the whole procedure adopted by the counsel of petitioner/defendant were not consonance with law and procedure, law would come to rescue those persons having approached court of law as per procedure and law. The counsel of petitioner/defendant has not referred and judgment of any court of law, mere urged for substantial justice. All parties and their counsel were bound to assist the court in pursuance of the rule and procedure. As far as, question concerned the unconditional withdrawal of suit, the objection should be raised in first instance, but the counsel has failed to raise this objection before trial court or even Appellate Court. The petitioner/defendant even could not append the detail of documents about the ailment of petitioner/defendant, with the petition for leave to appeal.

9. For the forgoing reasons and discussion, we are of the view that the learned Division Bench of Chief Court and learned trial Courts have exhaustively deal with each and every point argued before it. We see no grounds to interfere with the well founded judgments. Consequently finding no merit in the petition, the same is dismissed

and leave refused with no order as to cast. These were the reasons for our short order dated 31-03-2016.

Leave refused.

Announced
31-03-2016

Judge

Chief Judge

Judge