

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN.
C.P.L.A. NO.03/2010.**

Before: - **Mr. Justice Muhammad Nawaz Abbasi, Chief Judge.**
Mr. Justice Muhammad Yaqoob, Judge.

Islamic Investment Co-operative Society Aliabad through Manager Aliabad Branch Hunza.

Petitioner/plaintiff

VERSUS

1. Sultan Ishaq, Ex. General Manager, Islamic Co-operative Society, r/o Altit Hunza, District Gilgit.
 2. Registrar, Co-operative Society Gilgit.

Respondents/defendants.

**PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF
GILGIT-BALTISTAN (EMPOWERMENT AND SELF
GOVERNANCE) ORDER 2009, AGAINST THE JUDGMENT
DATED 14-12-2009, PASSED BY THE CHIEF COURT.**

Present: - Mr. Ehsan Ali, Advocate for the petitioner.
Mr. Johar Ali, Advocate for the respondents.

Date of Hearing: - 04-05-2010.

ORDER:-

Mr. Justice Muhammad Yaqoob, J...This leave to appeal seeks by Islamic Co-operative Societies, against the impugned order dated 14-12-2009, passed by the learned Single Bench of Chief Court, Gilgit-Baltistan, whereby the learned Single Bench Chief Court Gilgit-Baltistan has dismissed the revision Petition and upheld the award dated 07-8-2004, which has been passed under the ambit of Co-operative Society Act 1925. Hence this leave to appeal.

The back ground of the civil litigation is that the petitioner/plaintiff (Islamic Investment Society) filed a civil suit in the court of Civil Judge 1st Class Hunza against the respondents/defendants for declaration to the effect that the award dated 07-08-2004, passed by respondent No.2, being wrong, ex-parte, against the facts and without lawful authority as such the same is not maintainable and liable to be set aside. He further prayed that the order dated 30-04-2005, passed by Chief Secretary, Gilgit-Baltistan, being appellate authority is in effective, ab-initio null and void, as a consequential relief has also prayed, for a permanent injunction against the recovery proceeding as initiated by respondents No.2 and 3 against the petitioner/plaintiff.

Respondents/defendants strongly contested the suit on its maintainability by filing an application under Order 7 Rule 11 of C.P.C, the same was turned down by the learned trial Court, holding the civil suit maintainable on 26-5-2006.

Being aggrieved and dissatisfied from the order dated 26-5-2006, respondents/defendants assailed this order by way of revision petition before the learned Additional District Judge Gilgit, who vide his order dated 7-11-2006, modified the order passed by the learned trial court dated 26-5-2006.

The modified order of the learned Additional District Judge is reproduced herein below for clarification:-

- i. Plaintiff Islamic Investment Society shall deposit the whole amount of Rs.6, 00,000/- within a date fixed by the trial Court which shall not more than one month.
- ii. Failure to comply with the above said legal requirements, plaint shall be rejected. Impugned order modified.

The present petitioner/plaintiff filed a review petition before the same court against the order dated 07-11-2006, which was also dismissed, thereafter the petitioner/plaintiff challenged both the impugned orders before the learned Chief Court Gilgit-Baltistan, whereby the learned Single Bench of Chief Court, has disposed of, the second Revision petition without converting it in to writ petition, as Civil Procedure Code does not provide any provision for preferring 2nd revision petition. The contents of impugned order is reproduced herein below for clarification of legal and factual position:-

"Hence the suit No.33/05 and revision in hand are hereby dismissed. Award dated 07-8-2004, uphold and executable under the provision of relevant law."

Arguments heard and record perused. The learned counsel for petitioner Mr. Ehsan Ali, Advocate, submits, that the impugned judgment is incorrect, baseless, contrary to the facts and record of the case, hence not maintainable. He further contended that the impugned judgment has not been passed by discussing the real issue involved in the case. The petitioner had filed revision petition against the order of Additional District Judge Gilgit for depositing of awarded amount Rs.6,00,000/- in the trial court, for further proceeding of suit. But the learned single Bench of Chief Court has given the final judgment in the instant case by astonishingly keeping the real issue un-discussed. Therefore, the judgment of Single Bench of Chief Court, Gilgit-Baltistan, is unjustified, arbitrary and against the precious rights of the petitioner, as such the impugned judgment has no legal sensity and liable to be set aside.

The second important point raised by the learned counsel for petitioner is that the learned Chief Court Gilgit-Baltistan has traveled beyond the scope and object of the revision petition, therefore the impugned judgment is vague, perverse, ambiguous and misconceived, as such not maintainable. Moreover, the learned single Bench of Chief Court has given her judgment without framing issues, which is in gross violation of the basic principle of law, justice and equity therefore, the impugned judgment of the Chief Court is not maintainable.

On the other hand the learned Advocate Mr. Johar Ali, for the respondent argued and submits that the learned trial court has wrongly dismissed the application dated 23-03-2006, under Order 7 Rule 11 C.P.C. dated 23-3-2006 by holding the suit maintainable and directing the respondent/defendant to file their written statement. The suit of the plaintiff is not maintainable and liable to be dismissed. He further argued that section 70-A of Co-operative Society Act 1925 clearly ousts the jurisdiction of Civil Court, therefore, the suit is liable to be dismissed at preliminary stage, but the trial court did not do so. He strongly contended, that the Chief Secretary, was obviously exercising the powers of the Provincial Government, when he heard the appeal and his decision attain finality by virtue of Section 64&64-A of Co-operative Society Act 1925, such order shall be final and conclusive and shall not be liable to be called in question before any civil and Revenue Court, as such the learned Single Bench of Chief Court, Gilgit-Baltistan, has rightly passed the impugned judgment in favor of respondents/defendants. At the end of his arguments the learned counsel for respondents prayed that this leave to appeal may be

dismissed by declaring the same as meritless, to meet the ends of Justice.

We have carefully attended the arguments of learned counsel for both sides at length and have perused the available record with due care and caution. The learned Chief Court Gilgit-Baltistan has failed to exercise its jurisdiction so vested in it on the following grounds.

Admittedly either right or wrong the respondents No.2 Registrar Co-operative Society, has passed an award of Rs.6,00,000/- in favour of respondents/defendant No.1 on 07-8-2004, It is also not controversial that revision/appellate authority i.e. Chief Secretary, Gilgit-Baltistan, has dismissed the appeal of petitioner/plaintiff (Islamic Investment Society) on 20-11-2005.

Petitioner/Plaintiff has challenged the validity of award, and the recovery of arrears through the instant suit, therefore the case of plaintiff/petitioner comes with in the ambit of Co-operative Society Act 1925, on account of which, the respondent No.1 at the very out set contested the maintainability of the plaint under Order 7 Rule 11 C.P.C. vide their application dated 23-03-2006. Learned Trial Court has dismissed the said petition with out framing of issues. Although it is pertinent to mention here, that in appealable case findings should be given after framing of issues, even though it may be un-necessary to decide some for purposes of the decision arrived at, but the learned lower Courts have failed to frame preliminary issue regarding "jurisdiction of Civil Court". Thus the findings /judgments of the lower Courts do not have any legal sensity in accordance with law. The Universally recognized principle of law to frame issues and followed by judgment based on discussing every issue in detail has been overlooked

by both the learned lower Courts. Moreover, the courts should not travel beyond pleadings/record available on file, decision should be based on the case as pleaded, but particularly in this case the learned Single Bench of Chief Court, has traveled beyond the scope and object of the case pleaded by the parties.

In the light of above circumstances we have come to the conclusion that it is a fit case for remand, therefore we set aside the impugned judgment dated 14-12-2009, passed by the learned single bench Chief Court Gilgit-Baltistan and case is remitted back to the trial court with the direction, to decide the question of jurisdiction in the matter as preliminary issue after filing the written statement on behalf of respondents/defendants. The petitioner/plaintiff already deposited Rs. 600,000/- in compliance with the order of this court dated 18-03-2010. The trial Court is further directed to refrain from releasing the deposited amount to the parties till final disposal of the suit. The short order dated 04-05-2010, is reproduced here under is treated as part of this Judgment:-

"For the reasons to be recorded later on this petition is converted into an appeal and allowed. The order of Chief Court is set aside and case is remitted back to the trial Court to decide the question of jurisdiction of Civil Court in the matter as preliminary issues after written statement is filed by defendants/respondent."

Petition is converted into appeal and allowed.

Chief Judge

Judge

