

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
CPLA No. 01/2009

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

Haji Ghulam Hussan s/o Ghulam Muhammad r/o Village Tingus Tehsil and District,
Skardu.....
Petitioner.

Versus

Haji Qasim s/o Haider r/o village Tingus Tehsil and District , Skardu. Respondent

**CIVIL PETITION FOR LEAVE TO APPEAL AGAINST THE
JUDGMENT /ORDER PASSED BY THE N.AS CHIEF COURT
(CAMP SKARDU) DATED 22-08-2007.**

Mr. Munir Ahmed Advocate for the petitioners.
Mr. Muhammad Shafi, Sr. Advocate for the respondent.

Dated of Hearing: 27-10-2010

JUDGMENT

Muhammad Nawaz Abbasi, Cj: This petition for leave to appeal has been directed against the judgment dated 22-08-2007 passed by Chief Court in an appeal arising out of a Civil Suit for recovery of money. The suit would be of composite character for recovery of money and rendition of account as the defendant has made a counter claim as set off.

2. The learned Civil Judge having framed issues in the light of pleadings of the parties ultimately dismissed the suit as time barred. The petitioner assailed the judgment of the learned Civil Judge before the Chief Court in appeal and learned Division Bench of Chief Court while setting aside the judgment of court of first instance allowed the appeal as under:-

“That the impugned decree passed by the learned lower court is set aside by accepting the appeal and court to frame proper issues after revisiting the pleadings concisely and adjudicate the matter afresh”.

3. The learned counsel for the petitioner has contended that the Chief Court instead of deciding the appeal on merit and considering the question of limitation in proper manner wrongly remanded the case to the trial Court. He submitted that limitation in the suit would start running from the date of cause of action and in the present case cause of action would arise in favour of plaintiff and against the defendant on the date on which the cheque was dishonored and in that the finding of the trial court on the issue of limitation was contrary to the law and facts of the case.

4. The learned counsel for the respondent on the other hand submitted that in the light of the objection of the defendant in the written statement, the issue on limitation was framed placing the burden of proof on the plaintiff but on the failure of plaintiff to discharge the burden, the learned trial judge dismissed the suit as time barred, therefore,

no exception would be taken to the findings of learned Civil Judge on the issue of limitation. Learned counsel submitted that judgment of trial court was in favour of respondent but he has not challenged the remand order, therefore, this petition may not be entertained at this stage.

5. After hearing the learned counsel for the parties and perused the record with their assistance, we find that the trial court as well as Chief Court have not properly attended the controversial question of fact and law arising out of the pleadings of the parties. The learned Civil Judge without framing proper issues, made meaningless finding on some issues as under:-

“issue struck out as redundant.”

6. Similarly the Chief Court without framing additional issues or indicating the defect in the issued already framed, remanded the case with the following observation:

At the end we deem it proper to warn and direct all the Civil Judge (Trial Courts) to go through the above provision of law, fully and diligently while framing the issues as the framing of issues is most important stage and any negligence or over sighting of real controversies, between the parties at this stage might cause suffering of parties from in ordinate delays and also causes monitory losses to the litigant public. Resultantly the public losses the confidence over the Court of law, hence this Court intimates the lower judiciary in the area to be conscious in future otherwise, such negligence would be taken very seriously against them.

7. Be that as it may, in view of the nature of dispute between the parties and character of suit, we instead of diluting upon factual controversy, would direct that notwithstanding the observation of the Chief Court the trial court may reframe the issues or frame additional issues, if necessary, or if so proposed by the learned counsel for the parties and may also permit the parties to adduce further evidence if so required.

8. This is an old matter, therefore, we direct that the trial court while proceeding expeditiously and without granting unnecessary adjournment to either party will conclude the proceedings before winter vacation and decide all issues in the suit on the question of law and fact including the question of limitation on merits in accordance with law.

This petition is converted into an appeal and disposed of accordingly.

Chief Judge

Judge

