

IN THE SUPREME APPELLATE COURT GILGIT -BALTISTAN

C.P.L.A. No.32/2009

Before: - **Mr. Justice Syed Jaffar Shah, Judge.**
Mr. Justice Muhammad Yaqoob Khan, Judge.

**Yawar Hussain S/o Haji Fida Hussain,
R/o Amphary Tehsil & District Gilgit**

Petitioner

Versus

**Anwar Ali Khan S/o Haji Safar Khan,
R/o Khazana Road Tehsil and District Gilgit**

Respondent

**PETITION FOR GRANT OF LEAVE TO APPEAL
AGAINST THE IMPUGNED JUDGMENT/DECREE
DATED 10-07-2009, PASSED BY CHIEF COURT
GILGIT -BALTISTAN.**

Present: - Mr. Sharif Ahmed Advocate for the petitioner.

Date of Hearing: - 10-03-2010.

ORDER:-

Mr. Justice Muhammad Yaqoob Khan, J. This petition for leave to appeal has arisen out of a civil recovery suit brought by the plaintiff/respondent Anwar Ali Khan against the petitioner/defendant. Ex-parte decree dated 11-08-2008 was passed by Civil Judge First Class District Gilgit. Petitioner /defendant filed appeal before an additional District Judge Gilgit. The learned Additional District Judge Gilgit did not find any force in the appeal, it was therefore dismissed by him, thereafter, the petitioner went in revision before the learned Chief Court, Gilgit-Baltistan, but in vain.

2. Respondent/plaintiff filed a suit for recovery of amount of Rs.90,000/= along-with interest with effect from date of filing of the suit up to the final disposal. The suit proceeded, issues were framed. Respondent/plaintiff adduced evidence in proof of his claim, while the case was adjourned for evidence of

defendant/petitioner but the defendant/petitioner failed to produce witnesses, as such the defence was struck off by the trial court on 9-6-2008 and the suit was fixed for final arguments. The present petitioner/defendant was proceeded ex parte on the same day as he was absent from the Court and in the result, ex parte decree was passed against him on 11-8-2008.

3. Feeling aggrieved by the decree, appellant, filed an application under Order IX Rule 13 C.P.C. on 18-03-2009 which was seriously contested on facts as well as on the question of Limitation. The learned Single Bench of the Chief Court in the impugned order noticed that the application for setting aside the decree required to be filed within 30 days of the decree, was actually filed after the passage of more than four months and was thus hit by the provisions of Article 164 of the 1st Schedule to the Limitation Act. On facts as well the learned Single Bench of Chief Court found no merit in the revision petition of the petitioner/appellant and dismissed the same.

4. At the preliminary hearing the learned Counsel Mr. Sharif Ahmed Advocate vigorously contested that application for setting aside the ex-parte decree was made within time prescribed by Article 181 of the 1st Schedule to the Limitation Act and that the circumstances of the case did not attract Article 164 of the said Schedule to the Limitation Act. While Article 164 prescribes a period of 30 days for an application for setting aside the ex-parte decree from the date of the decree, where the summons were not duly served when applicant has knowledge of the decree, Article 181 prescribes a period of 3 years in an application for which no period of Limitation is provided for elsewhere in the 1st Schedule to the Limitation Act or by Section 48 of the Code of CPC 1908, when the right to apply accrues.

5. In the facts of the present case as observed earlier applicant/defendant were duly served with the summons and they had taken a definite stand in the defence of the suit. Therefore in our view Article 164 of Limitation Act is

attracted and not Article 181 as misunderstood by the learned counsel. Application for setting aside of the ex-parte decree having been moved after passage of delay of 4 months. Petitioner/defendants seeking condonation of delay was required to explain delay of each day beyond period of Limitation. General and vague statement in support of condonation of delay would not be sufficient. Grounds advanced by counsel for setting aside ex-pare decree are neither bonafide nor tenable at the law.

6. The petitioner was well aware of the legal issue. The Counsel for petitioner was also in attendance when the ex-parte decree had been passed, despite of knowledge and attendance of the Counsel for Petitioner /defendant they filed an application under Order 9 Rule 13 C.P.C. along-with application under section 5 of the Limitation Act for condonation of 4 months delay after laps of prescribed Limitation provided by the law of Limitation. Resultantly the learned Lower Courts have not considered both the plea raised by the petitioner/defendant, application under section 5 of Limitation Act rejected by the learned Civil Judge as time barred and up held the ex-parte decree passed in favor of plaintiff/respondent.

7. The impugned ex-parte decree passed by the learned trial Court though seems to be very short and sketchy and the learned trial Judge has not bothered to discuss the evidence adduced by the present respondent which ought to have been done so, as even he has power to dismiss the suit after perusal of the record of the case. He should have reached to the conclusion that the suit was false and having no support from the record. Despite the deficiency in the order of learned Civil Judge the decree could not be called without jurisdiction and void ab-initio, as the day on which the impugned ex-parte decree passed was "**DATE OF HEARING**" as from perusal of the order sheet it appears that the case was fixed for final arguments. The higher Judiciary as well as the August Supreme Court of Pakistan are at consonance with each other on the point that the date fixed for arguments comes within the definition of the "date of

hearing.” Hence the legal resort available to the petitioner to make set aside the decree was under Order 9 Rule 13 C.P.C. which he availed but after lapse of Limitation. As Order 9 Rule 13 C.P.C. is governed under Article 164 of the Limitation Act 1908 which clearly prescribed 30 days of Limitation for filing of application under Order 9 Rule 13 C.P.C.

In the circumstances discussed above, we are fully in agreement with the judgment passed by learned Single Bench of the Chief Court dated 10-07-2009, and find no merit in the petition for leave to appeal and accordingly dismiss the same.

Leave to appeal refused.

Announced.
10-03-2010

JUDGE

JUDGE