

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa

Mr. Justice Yahya Afridi

Civil Appeal No. 2015 of 2022

(On appeal from the judgment dated 19.05.2022 passed by the Lahore High Court, Rawalpindi Bench in C.R. No. 233/2021)

Syed Zahid Hussain Shah.

... Appellant

Versus

Mumtaz Ali and others.

... Respondents

For the Appellant:

Syed Qalb-i-Hassan, ASC.

For Respondent No.1:

Mr. Mumtaz Ali, ASC.
Mr. M. Sharif Janjua, AOR.

On Court's Notice:

Mr. Ayaz Shaukat,
Deputy Attorney-General for Pakistan.
Mr. Shaukat Rauf Siddiqui,
Additional Advocate-General, Punjab.
Mr. Ashfaq Ahmad Kharal,
Additional Advocate-General, Punjab.

Amicus Curiae:

Sh. Zamir Hussain, Sr. ASC.
Mr. Muhammad Munir Paracha, ASC.

Date of Hearing:

13.12.2022

JUDGMENT

Qazi Faez Isa, J. Leave to appeal the judgment of a learned Single Judge of the Lahore High Court, passed in Civil Revision No. 233 of 2021, was granted by this Court on 30 August 2022, in the following terms:

'Learned counsel representing the petitioner states that a suit was filed in respect of land purchased by the petitioner wherein it was contended that its ownership was not that of those in whose name it stood but that the plaintiff was its real owner, and those shown to be the land's owners were actually its *benami* owners. The suit was decreed without making the petitioner a party thereto. Therefore, the petitioner filed an application for setting aside the decree under section 12 (2) of the Code

of Civil Procedure ('CPC'), which was allowed and he was made party thereto, but the suit was again decreed. Against this decree the petitioner filed an appeal but he did not affix the applicable court fee on the appeal, as according to him he was suffering from Covid-19, and upon recovery moved an application to condone the delay, which was declined by the learned Judge of the Appellate Court, whose order was assailed before the High Court in Civil Revision and the learned Single Judge of the High Court sustained the order of the Appellate Court.

2. Learned counsel submits that on merits the petitioner had a very good case and that the matter of court fee is between the subject (petitioner) and the State and does not grant a right to the other side, which he can use to throttle the right of appeal and in this regard refers to the cases of *Abdul Khaliq v Haq Nawaz* (PLD 2018 S.C.729), *Provincial Government v Abdullah Jan* (2009 SCMR 1378) and *Sultan Ahmad v Khuda Bux* (1986 SCMR 1005). Leave to appeal is granted to consider amongst others, the said points. Since the matter involves stamp duty, interest of the Province may be affected, therefore, notice be also issued to the Advocate General, Punjab.'

2. When we commenced hearing this appeal on 25 October 2022 a number of additional questions arose which were incorporated in the order passed on that day, reproduced hereunder:

'Both the learned counsel undertake that their respective clients will not sell/transfer/gift/mutate any further land till the disposal of this appeal. The judgment of the appellate court resulted in two civil revisions in the High Court and now the matter has come before this Court. All this would not have occurred if the appellate court had not proceeded with the appeal till the deposit of the court fee or had simply rejected/returned the appeal. We have heard both the learned counsel, however, their submissions attend to the question with regard to when, where and if time for payment of court fee should be allowed with reference to section 148 and 149 of the Code of Civil Procedure, 1908.

2. However, what concerns us is more fundamental, that is:

- (a) Whether a court should pass an order in a case in which requisite court fee has not been paid and pass judgment deciding the case on merits and prescribe therein the time within which the court fee should be paid in the order/judgment deciding the case?

- (b) If the requisite court fee is not paid should the appeal be rejected/ returned as per Order VII Rule 11(c) of the Code of Civil Procedure, 1908, which as per the decision in the case of *Siddique Khan v Abdul Shakur Khan* (PLD 1984 SC 289), is applicable to appeals as well?

3. We need to settle the aforesaid questions which have apparently not been previously considered by this Court. Therefore, we would issue notice to the Attorney-General for Pakistan in terms of Order XXVII-A of the Code of Civil Procedure, 1908 and appoint M/s Sh. Zamir Hussain, ASC and Mr. Muhammad Munir Paracha, ASC as *amicus curiae*. Office to send a copy of the judgment of the appellate court (at pages 35-49) together with a copy of today's order and order dated 30 August 2022 of this Court to the learned Attorney-General for Pakistan and the learned *amicus curiae* to enable them to render assistance. The learned Attorney-General, the learned Advocate-General, Punjab, learned amicus and the learned counsel for the parties may submit concise statements addressing the said queries. The Research Cell of this Court should also submit a comprehensive note on the said queries. To be fixed in the **2nd week of December 2022.**'

3. The learned Syed Qalb-e-Hassan, representing the appellant, primarily relied upon the decision of this Court in the case of *Siddique Khan v Abdul Shakur Khan*.¹ He also referred to the judgments of learned Single Judges of the Lahore High Court in the cases of *Muhammad Sharif Khan v Ghulam Farid*² and *Ismail Shah v Saleh Muhammad Shah*.³ He submitted that the learned Additional District Judge, Rawalpindi ('ADJ') had decided the appeal in favour of the appellant, through a fifteen page judgment, and having decided the appeal the learned ADJ could not then state that, if the court-fees of fifteen thousand rupees is not paid within thirty days, '*the appeal shall be deemed to have been dismissed*'. In any event the appellant had submitted an application, given cogent reasons to extend the time for payment of court-fee, which the appellant was ready to pay, but the application was dismissed for no good reason. He alternatively submitted that against the judgment of the learned ADJ the plaintiff in the suit (respondent No. 1 herein) too had filed a civil revision, under section 115 of the CPC, therefore, the High Court could have exercised revisional jurisdiction in respect of the revision filed by the respondents or it could

¹ PLD 1984 Supreme Court 289.

² 1980 CLC 545.

³ AIR 1925 Lahore 326(2).

have exercised it itself (*suo motu*) and sustained the judgment of the learned ADJ and set aside the judgment of the learned trial court Judge which was not sustainable in law.

4. The learned Mr. Mumtaz Ali, who represents the respondent No. 1, submitted that the appellant was granted thirty days to pay court-fees by the learned ADJ but it was not paid therefore the learned ADJ had dismissed the appeal. He submitted that the judgments of the appellate and the revisional courts are in accordance with the law. He next contended that the appellant should not receive a premium for not paying court-fees. Reliance was also placed on Order XLI, rule 3 of the CPC to contend that an appeal has to be filed within a period of thirty days, and that an *appeal* filed without affixing applicable court-fees does not constitute an *appeal*. Learned Mr. Mumtaz Ali also submitted that resort cannot be had to section 148 of the CPC to seek enlargement of time because this section only applies in respect of those time periods mentioned in the CPC, and that neither payment of court-fees nor the period within which it is to be paid is mentioned therein.

5. Notice was issued to the Attorney-General for Pakistan under Order XXVIIA of the CPC on 25 October 2022, however, it transpired that the office of the Attorney-General was lying vacant.⁴ Mr. Ayaz Shaukat, Deputy Attorney-General for Pakistan (**'DAG'**) attended this Court but since neither Order XXVIIA of the CPC nor the Constitution of the Islamic Republic of Pakistan mentions an Additional, Deputy or Assistant Attorney-General, therefore, they cannot represent the Attorney-General when the office of the Attorney-General is vacant. However, we heard Mr. Ayaz Shaukat's submissions but did so not in his capacity as DAG, representing the Attorney-General for Pakistan, but as an advocate providing assistance to the Court.

6. The learned Mr. Ayaz Shaukat referred to a decision of this Court in the case of *Fida Muhammad v Muhammad Khan*,⁵ which was by a four-member Bench, and stated that it had not followed the earlier decision of a two-member Bench judgment in the case of *Walayat Khatun v Khalil Khan*,⁶

⁴ The Attorney-General, Mr. Ashtar Ausaf Ali, had resigned on 12 October 2022.

⁵ PLD 1985 Supreme Court 341.

⁶ PLD 1979 Supreme Court 821.

and had instead reiterated the decision in the *Siddique Khan* case (above). He stated that unnecessary complications are created when decisions are made subject to payment of court-fees. According to him, the proper course to take when court-fees is not paid is for the court to stay its hands till it is paid, failing which reject the plaint on the ground of non-payment and to do so without deciding the case on merits. He further submits that the language of Order VII, rule 11(c) of the CPC suggests that it is also applicable to appellate and revisional courts. Reference was also made to section 10(ii) of the Court-Fees Act, 1870, which stipulates that if applicable court-fees has not been paid '*the suit shall be stayed until additional fee is paid*', and '*if the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.*' He also referred to the case of *Provincial Government through Additional Chief Secretary v Abdullah Jan*,⁷ wherein it was held that cases should be decided in a '*fair and just*' manner and on merits and that the object of the Court-Fees Act, 1870 '*is to secure revenue for the benefit of State and not to arm the litigant with weapon of technicalities to harass*'.

7. Mr. Shaukat Rauf Siddiqui, the learned Additional Advocate-General, Punjab agreed with the submissions of the learned Mr. Ayaz Shaukat and also relied upon the judgment in the case of *Dost Muhammad v Nazar Hussain Khan*.⁸

8. The learned *amicus* Sh. Zamir Hussain submitted that it is undesirable for courts to decide cases before court-fees is paid and referred to Order VII, rule 11(c) of the CPC which stipulates that a '*plaint shall be rejected*' if court-fees is not paid. He referred to sections 148 and 149 of the CPC and to the following cases: *Walaiti Ram v Gopiram*,⁹ *Sundar Pandit v Mahadeo Prasad*,¹⁰ *Mahanth Ram Das v Ganga Das*.¹¹ Reference was also made to cases of *Mst. Saddiqunnisa v Muhammad Sultan Mirza*,¹² *Ghulam Rasum v Additional District Judge, Lahore*,¹³ *Auqaf Department Punjab v Saeed Ahmad*¹⁴ and to a decision (of the same learned Judge whose

⁷ 2009 SCMR 1378, p. 1381.

⁸ 1984 SCMR 325.

⁹ AIR 1935 Lahore 75.

¹⁰ AIR (29) 1942 Patna 243.

¹¹ AIR 1961 Supreme Court 882.

¹² PLD 1972 Karachi 103.

¹³ PLD 1982 Lahore 305.

¹⁴ 1996 MLD 1074.

judgment is assailed herein) in the case of *Muhammad Tariq v Amjad Ali*¹⁵ which had relied on this Court's decision in the case of *Assistant Commissioner and Land Acquisition Collector v Abdul Shakoor*,¹⁶ however, he submitted that in that case the door for paying court-fees subsequently had not been closed.

9. The learned *amicus* Mr. Muhammad Munir Paracha stated that the decision in *Walayat Khatun*, which was by a two-member Bench of this Court, was effectively overruled by a four-member Bench of this Court in the case of *Siddique Khan*, which, according to the learned *amicus* expressed the correct legal view. Reference was also made to the judgment in the case of *Shah Wali v Ghulam Din*,¹⁷ a decision by a five-member bench of this Court, where it was held that, if the plaintiff-respondent did not pay the correct amount in a pre-emption suit his suit should have been dismissed.

10. That while this appeal was pending the appellant paid the applicable court-fees of fifteen thousand rupees; through CMA No. 10149/2022 the paid *challan* and stamp paper of fifteen thousand rupees were brought on record.

11. The facts of the case are that Mumtaz Ali (respondent No. 1) had filed a suit against the legal heirs of his sister Mst. Gul Nargas and her husband Muhammad Ghaffar (**'the Legal Heirs'**) alleging that the following tracts of agricultural lands, situated in Moza Gorakhpur and Moza Adiala of Tehsil and District Rawalpindi, were paid for by him and bought by him in the name of his sister and brother-in-law, that is, they were its ostensible (*benami*) owners. The particulars of the alleged *benami* land, that is, sale deed number, date, area, price and name of buyer are respectively mentioned herein below (**'the Lands'**):

	Sale Deed No.	Date	Area	Price	Buyer
(1)	12217	2.11.1987	20 <i>kanals</i>	140,000	Muhammad Ghaffar
(2)	12237	2.11.1987	20 <i>kanals</i>	140,000	Muhammad Ghaffar
(3)	6523	27.4.1988	10 <i>kanals</i> & 5 <i>marlas</i>	72,000	Muhammad Ghaffar

¹⁵ PLD 2018 Lahore 502.

¹⁶ 1997 SCMR 919.

¹⁷ PLD 1966 Supreme Court 983.

(4)	6524	27.4.1988	12 <i>kanals</i>	84,000	Muhammad Ghaffar
(5)	8142	22.8.1989	46 <i>kanals</i>	230,000	Muhammad Ghaffar
(6)	8143	22.8.1989	60 <i>kanals</i>	300,000	Muhammad Ghaffar
(7)	3360	18.3.1990	14 <i>kanals</i> & 15 <i>marlas</i>	70,000	Muhammad Ghaffar
(8)	3361	18.3.1990	9 <i>kanals</i>	36,000	Muhammad Ghaffar
(9)	5733	23.5.1990	1 <i>kanal</i> & 3 <i>marlas</i>	20,000	Muhammad Ghaffar
(1 0)	5734	23.5.1990	14 <i>marlas</i>	10,000	Muhammad Ghaffar
(1 1)	11975	25.11.190	10 <i>kanals</i>	60,000	Mst. Gul Nargis
(1 2)	2453	28.2.1991	<u>20 <i>kanals</i></u>	100,000	Mst. Gul Nargis

Total: 214 *kanals*
& 17 *marlas*

12. Mumtaz Ali alleged that his sister and brother-in-law were the ostensible owners (*benamidars*) of the Lands, but filed the suit in 2003 after their deaths, therefore, the purported *benamidars* could not controvert the allegation themselves. The Lands had stood in the names of Mst. Gul Nargis and Muhammad Ghaffar for 16, 15, 14, 13 and 12 years respectively and there was no explanation in the plaint why Mumtaz Ali had not earlier asserted his purported ownership to the Lands. The reason mentioned in the plaint by the plaintiff for buying the Lands in the names of his sister and brother-in-law was that he '*wanted to do business of purchasing land and after the same, to divide in plots and sell the same on profit, in the year 1987*' and that the purported *benamidars* had '*agreed to help him in the aforesaid business as the plaintiff was serving in Saudi Arabia in the year 1987.*' The Legal Heirs denied the allegations and claimed compensatory costs.

13. Out of the Lands the Legal Heirs sold the following lands to Syed Zahid Hussain Shah (the appellant herein) through the following sale mutations ('**the Sales Mutations**')

	Sale Mutations No.	Sanctioned on	Area
(1)	9987	28.7.2005	20 <i>kanals</i> & 10 <i>marlas</i>

(2)	9988	28.7.2005	3 kanals & 6 marlas
(3)	10014	24.11.2005	8 kanals & 18 marlas
(4)	10015	24.11.2005	1 kanal & 2 marlas
(5)	10017	24.11.2005	2 kanals & 4 marlas
(6)	3806	28.9.2007	15 kanals & 8 marlas
(7)	10803	13.10.2007	44 kanals & 4 marlas
(8)	10962	22.7.2009	<u>14 kanals & 15 marlas</u>
Total:			110 kanals & 7 marlas

The appellant was subsequently arrayed as defendant No. 16 in the suit when his application, filed under section 12(2) CPC, was accepted and the case was remanded to the learned Civil Judge.

14. The learned Civil Judge, *vide* judgment dated 30 October 2019, decreed the suit. The plaintiff was declared to be the owner of the Lands and it was held that Mst. Gul Nargis and Muhammad Ghaffar were his *benamidars*. The Sale Mutations were cancelled, however, the learned Civil Judge held that since the appellant '*was bona fide purchaser and he had no knowledge about pendency of suit*', therefore, he was entitled to receive '*compensation*' from the Legal Heirs '*as per current market value.*' The appellant assailed the learned Civil Judge's judgment and his appeal was allowed subject to payment of court-fees. However, since court-fees was not paid the judgment of the Appellate Court stood recalled. The appellant then filed a civil revision before the High Court. The learned Judge of the High Court, through the impugned judgment, upheld the decision of the Appellate Court which had disentitled the appellant because of non-payment of court-fees; without deciding the case on merits. Therefore, it would be appropriate to first attend to the matter of non-payment of court-fees because if we come to the conclusion that the judgments of the Appellate Court and High Court on this score are not sustainable then it would be best to remand the case to the High Court.

15. On the question of non-payment of court-fees we have heard the submissions of the learned counsel and benefited from the assistance provided by the learned *amicus*. We proceed to consider the cited cases with regard to non-payment of court-fees.

16. This Court had noted the object and scope of the Court-Fees Act, 1870 in the case of *Abdul Khaliq*,¹⁸ which was that, '*The Court Fee Act being a fiscal statute has been enacted to collect revenue for the State. It has not been enacted to arm a litigant with a view of technicality against his opponent. Therefore, neither the Court of law nor a litigant could use this law as a noose to strangle a right which otherwise stands established.*' In *Provincial Government v Abdullah Jan*,¹⁹ a three-member Bench of this Court held that, '*the Court Fees Act, 1870 is a taxing statute, which would be interpreted in favour of the subject. ... because the basic object of all the [taxing] statutes are to secure revenue for the benefit of the State and not to arm the litigant with the weapon of technicality.*'²⁰

17. The question whether insufficient court-fees paid on two pre-emption suits could be the reason for their dismissal was considered in the case of *Sultan Ahmad*,²¹ and a four-member Bench of this Court held that pursuant to section 149 of the CPC the court could exercise its *power to make up deficiency of court-fees* and extend time. It was held that, '*the Court was amply empowered to extend the time for doing the needful as earlier ordered or even pass a fresh order to the same effect by a specified future date. It is well-settled that the power vesting in the Court under section 148, C.P.C. can be exercised successively and even after the time under previous such order has expired.*'²² However, in *Walayat Khatun v Khalil Khan*²³ leave to appeal was not granted against the discretion concurrently exercised by three courts in not further extending the time to deposit the requisite court-fees in a pre-emption. But, in *Shah Wali v Ghulam Din*²⁴ time to deposit the balance of the decretal amount in a pre-emption suit was extended by a five-member of this Court.

18. The Supreme Court of India in *Mahanth Ram v Ganga Das*²⁵ held that, under section 148 and 149 CPC the Court could enlarge time even after the time earlier fixed had expired. In *Nazir Ahmad Bhatti v M.*

¹⁸ *Abdul Khaliq v Haq Nawaz*, PLD 2018 Supreme Court 729, p. 731.

¹⁹ 2009 SCMR 1378.

²⁰ *Ibid.*, p. 1381B.

²¹ *Sultan Ahmad v Khuda Bux*, 1986 SCMR 1005.

²² *Ibid.*, p. 1008C.

²³ PLD 1979 Supreme Court 821.

²⁴ PLD 1966 Supreme Court 983.

²⁵ AIR 1961 Supreme Court 882.

*Younus*²⁶ a learned Judge of the High Court held that Order VII, rule 11, CPC requires that if the Court finds that applicable court-fees is not paid the plaintiff should be called upon to pay it within the time given to do it but if he fails to do so then it should reject the plaint, however, since such an opportunity had not been provided the case was remanded to provide such opportunity.

19. A four-member Bench of this Court in the case of *Siddique Khan v Abdul Shakur Khan*²⁷ observed that by virtue of section 107(2) of the CPC, 'Order VII, rule 11(b) and (c) applies to plaints as also to memoranda of appeals,'²⁸ and, if the memorandum of appeal is not sufficiently stamped it should not be rejected without providing an opportunity 'to supply the required court-fee.'²⁹ This decision was endorsed in *Fida Muhammad v Muhammad Khan*,³⁰ another decision by a four-member Bench. However, a three-member Bench of this Court in *Assistant Commissioner and Land Acquisition Collector v Abdul Shakoor*³¹ declined to grant leave to appeal against the order of the High Court which had dismissed the appeal because the requisite court-fees was not paid within the prescribed limitation period and noted that the appellant was *negligent and his conduct was contumacious*. In *Muhammad Tariq v Amjad Ali*³² the plaintiffs had claimed land on the basis of a purported gift, which they had failed to establish and the appeal against the civil court's judgment remained pending for a period of two years and ten months which was finally dismissed for non-payment of applicable court-fees, and a learned Judge of the Lahore High Court dismissed the civil revision by upholding the decisions of the subordinate courts.

20. About a hundred years ago the Lahore High Court had decided in the case of *Ismail Shah v Saleh Muhammad Shah*³³ that when a suit is dismissed on merits then an order for additional court-fees was incompetent. And, in *Walaiti Ram v Gopiram*,³⁴ decided ten years thereafter it was held that the question regarding court-fees should be decided at the

²⁶ 2018 MLD 2054.

²⁷ PLD 1984 Supreme Court 289.

²⁸ Ibid., p. 312.

²⁹ Ibid., pp. 312-313L.

³⁰ PLD 1985 Supreme Court 341, pp. 343-4.

³¹ 1997 SCMR 919.

³² PLD 2018 Lahore 502.

³³ AIR 1925 Lahore 326(2).

³⁴ AIR 1935 Lahore 75.

earliest opportunity and if the suit is incorrectly valued and insufficient court-fees is paid then the valuation should be corrected and order for the payment of court-fees be passed, and if the applicable court-fees is not paid then the plaint should be rejected under Order VII, rule 11 CPC, and that it was improper to decide the suit on merits and require the payment of deficient court-fees.

21. An unnecessary problem was created by the Appellate Court which decided the appeal, but made its judgment subject to payment of court-fees. The law requires that a court should first attend to the matter of court-fees. If court-fees is not paid the plaint may be rejected; in *Siddique Khan v Abdul Shakur Khan* case (above) it was held that the same also applies to memoranda of appeals. However, the Appellate Court adopted a course which the law does not provide. The learned ADJ allowed the appellant's appeal but made his decision subject to payment of court-fees within thirty days. The appellant submitted an application for enlargement of time, under sections 148, 149 and 151 CPC, in which he stated that he was not aware of the condition imposing court-fees and that due to the Covid-19 pandemic and closure of the court he was unable to make payment within the stipulated thirty days. However, his application was dismissed. As noted above the appellant has paid the court-fees, which has secured the interest of the State.

22. The question which requires consideration is whether the respondents' rights were infringed or interest undermined on account of non-payment of court-fees or by its belated payment. This Court in *Provincial Government v Abdullah Jan* and in *Abdul Khaliq v Haq Nawaz* (above) held that the Court-Fees Act, 1870 is a taxing statute which collects revenue for the State, and that it does not create any right in a party nor extinguishes any party's right. If the court-fees was a right vesting in a party then a court could not waive its payment. However, if a person is financially incapable of paying court-fees the CPC permits filing of a suit without payment of court-fees and the plaintiff therein is enabled to submit an application under Order XXXIII of the CPC to sue as a pauper, that is, without paying court-fees; there is no reason not to apply the same principle to appeals too. If payment of court-fees had created a right in the opposite-party the law would not have permitted entertaining an

application (under Order XXXIII CPC) seeking permission to sue as a pauper and file a suit without court-fees nor empowered the court to grant such application. .

23. In our opinion the cases in which money is due to the opposite-party, such as sale consideration in a suit seeking specific performance of contract or a statutory provision requiring deposit of the amount in a pre-emption suit to secure the interest of the purchaser, cannot be equated with cases in which court-fees is not paid or belatedly paid; payment of court-fees is not received by the opposite-party. Non-payment or belated payment of court-fees does not adversely affect the interest of the opposite-party. The learned ADJ should not have proceeded to decide the appellant's appeal till he had paid court-fees. In the instant case the appeal was allowed, and thus it would have been in the interest of the appellant to have paid it. If instead the appeal was dismissed the appellant may not have had an interest to pay it.

24. The appellant had given sufficiently valid reasons for extending the time for payment of court-fees, which the court could extend under sections 148 and 149 of CPC, therefore, his application seeking extension of time to pay court-fees, should have been accepted by the learned ADJ, failing which the learned Judge of the High Court should have allowed the civil revision filed against the decision because the learned ADJ had acted *illegally or with material irregularity in respect of the jurisdiction vested in the Court*.³⁵ If court-fees was allowed to be paid the interest of the State would have been secured, without in any manner undermining the legal rights of the opposite-party. It is not understandable why the appellant was not allowed to pay the court-fees, albeit belatedly. Therefore, we set aside the impugned judgment and the decision of the learned ADJ to the extent that he had dismissed the appellant's application seeking extension of time for deposit of court-fees which (as stated above) has been paid and do so by allowing this appeal and Civil Revision No. 233 of 2021 filed by the appellant in the High Court. However, the plaintiff in the suit (respondent No. 1 herein) had also assailed the judgment of the learned ADJ and had filed Civil Revision No. 306 of 2020;³⁶ it is not clear what became of this case. Therefore, Civil Revision No. 306 of 2020 and any other case filed by

³⁵ Code of Civil Procedure, 1908, section 115(3).

³⁶ Mentioned in paragraph 2 at page 3 of impugned judgment.

the respondents against the learned ADJ's judgment shall be deemed pending before the High Court which shall be decided on merits. In case such case(s) were withdrawn/disposed of the respondents shall be entitled to assail the merits of the judgment dated 19 June 2020 of the learned ADJ, Rawalpindi passed in Civil Appeal No. 401 of 2019, within the prescribed period which shall commence from the date of receipt of this judgment.

25. Before parting with this judgment we would like to observe that legal complications arise if a judgment is given, as in the instant case, without applicable court-fees having been paid, and parties alter their positions pursuant thereto, for instance the appellant may have proceeded to sell the land which he had purchased and thus create third-party interest therein, which may give rise to additional litigation. Such litigation can be avoided if the matter of court-fees is first settled. Moreover, when courts are inundated with cases, and of those who are keen to proceed with them, it does not stand to reason to waste court-time by deciding a case in which court-fees has not been paid.

26. We are grateful to the learned *amicus* and the learned counsel for their assistance. Office to send a copy of this judgment to those respondents who were not represented before this Court.

Judge

Judge

Announced in Court on 9 May 2023, at Islamabad.

Judge

Approved for Reporting
(M. Tauseef)