

**[Balochistan]**

**Before Muhammad Hashim Khan Kakar and Muhammad Noor Meskanzai, JJ**

**SECRETARY COMMUNICATION AND WORKS DEPARTMENT GOVERNMENT  
OF BALOCHISTAN and others----Appellants**

**Versus**

**DAD BAKHSH and another----Respondents**

Regular Second Appeals Nos.3 and 4 of 2007, decided on 27th September, 2012.

**(a) Civil Procedure Code (V of 1908)---**

---Ss. 79, 80, 82, O. III, R. 1, O. VI, R. 14, O. VIII, Rr. 3 & 5, O.IX, R. 6(1), O.XII, R.6, O. XXVII, Rr. 3 & 8---Qanun-e-Shahadat (10 of 1984), Arts.117 & 119---Contract Act (IX of 1872), S.2---Suit against Provincial Government and its officials for recovery of amount spent by plaintiff, a contractor at the eve of visit of its senior officers---Service of summons upon official-defendants and filing of written statement signed by their counsel only and not by them---Non-specific denial of plaintiff's claim by official-defendants in written statement and their subsequent non-appearance in court resulted in passing of ex parte decree against Government without recording evidence---Auction of Government Rest House in execution of ex parte decree and direction of Trial Court to hand over its possession to auction-purchaser---Ex parte decree and order in execution proceedings passed by Trial Court upheld by Appellate Court---Validity---Record showed that suit was filed on 3-3-1996 before Qazi at Pasni, while next date for appearance of defendants including Secretary to Government at Quetta was fixed as 5-3-1996 i.e. only one day---Record further showed that official-defendants on subsequent dates had sought adjournments on behalf of Secretary without any authority, which had been granted by Trial Court without ascertaining factum of due service of summons upon Secretary or issuing him fresh summons---Official defendants in written statement had not admitted plaintiff's claim---Trial Court had passed ex parte decree without

framing of issues and recording of evidence merely on the basis of plaint, whereas pleadings could not take place of evidence in absence of testimony of its maker given on oath before court---Facts asserted in plaint were required to be proved by plaintiff---Counsel could not sign plaint and written statement---Written statement of official-respondents signed only by their counsel was against provisions of O.III, R 1 and O.VI, R. 14, C.P.C., thus, same could not be treated as valid---Collusion between plaintiff and official-defendants was evident from their failure to appear before court after filing written statement---Court in case of possibility of collusion between parties would not be bound to give judgment on the basis of their admission---Trial Court had passed ex parte decree on a date, which could not be treated as a date of hearing, thus, same was without jurisdiction---Drawing of decree by Trial Court within 28 days was contrary to mandate of S.80, C.P.C.---State property could not be auctioned in pursuant of a void decree---Verbal direction of official-defendants would not amount to a promise made on behalf of Government Department---Plaintiff, if having spent suit amount on verbal direction of official-defendants, could sue them in their private capacity, but not the Government---High Court set aside impugned judgments/decrees and remanded case to Trial Court for its decision afresh after obtaining written statements from defendants and framing issues---High Court further directed the Secretary to Government to fix responsibility of official-defendants for having played collusive role in such proceedings and caused great financial loss to national exchequer.

Flight Lt. Anwarul Hasan Siddiqui v. Family Judge, Court No.III, Karachi and 2 others reported in PLD 1980 Kar. 477 rel.

#### **(b) Civil Procedure Code (V of 1908)---**

---O. VI, R. 1---Pleadings---Evidentiary value---Pleadings could not be read in evidence as proof of contents thereof in absence of statement of its maker given on oath before court---Principles.

Pleadings, plaint or written statement are not evidence by themselves and do not prove the assertions made therein, rather the contents thereof have to be proved through testimony given on oath and subject to cross-examination by the other side. The pleadings, which have not been confronted to the maker, are not sufficient to prove the contents of the same and cannot be read in evidence as proof of the content stated therein.

Pleadings do not take the place of evidence.

#### **(c) Civil Procedure Code (V of 1908)---**

---O. XII, R. 6 & O.XV, R. 1---Judgment passed on admission in case of possibility of collusion between the parties--- Powers of Court---Scope stated.

Where there is likelihood or possibility of collusion between the parties, the court would not give judgment on the basis of their admission. Even in presence of specific, unambiguous and categorical admission, it is discretion of the court whether to pass a decree or refuse the same. The discretion should be exercised subject to qualification regarding maintainability of the suit on legal and factual grounds.

#### **(d) Civil Procedure Code (V of 1908)---**

---O. IX, R. 6---Ex parte decree passed on a date not fixed for hearing---Validity---Such decree would be without jurisdiction---Principles.

#### **(e) Civil Procedure Code (V of 1908)---**

---Ss. 79, 80, 82, O. VIII, Rr. 3, 5, O. IX, R. 6(1), O. XII, R.6 & O.XXVII, Rr. 3 & 8---Contract Act (IX of 1872), S.2---Suit against Provincial Government and its officials for recovery of amount for additional work done by plaintiff-contractor on their verbal directions---Filing of written statement by official-defendants after service of summons upon them---Observations of Trial Court made in its interim order to the effect that document annexed with plaint were photostat copies, which were not admissible evidence, thus suit could not be decided without framing issues and recording evidence---Subsequent non-appearance of official-defendants in court resulted in passing of ex parte decree against Government without recording evidence---Auction of Government Rest House in execution of ex parte decree and direction of Trial Court to hand over its possession to auction-purchaser---Ex parte decree and order in execution proceedings passed by Trial Court upheld by Appellate Court---Validity---Trial Court in view of such admitted facts available on record could not decree the suit without recording evidence---Impugned decree was without jurisdiction and a nullity in eye of law---Record did not show issuance of even a single notice to Secretary to Government, thus, impugned decree to that extent was without jurisdiction and ab initio void---Written statement of official-defendants signed on their behalf by their counsel only could not be treated as valid written statement---Official-defendants had not admitted plaintiffs claim---Plaintiff had not annexed with plaint either copy of tender called or agreement or written order regarding additional work or certified/attested copies thereof---Photostat copies annexed with plaint were inadmissible in evidence---Mere verbal direction or order of defendants would not amount to a promise or condition in original agreement, unless same was duly amended by adding a fresh condition therein with approval of

competent authority---Government would not be legally bound to pay suit amount in absence of any such valid agreement---Plaintiff, if having done additional work on verbal direction of defendants without sanction of competent authority, could claim from them suit amount in their private capacity---State property could not be auctioned in pursuant to a void decree---Execution Court had adopted all coercive methods to compel defendants to make payment of decretal amount and had auctioned State property on worthless price---High Court set aside impugned judgments/decrees and remanded case to Trial Court for its decision afresh after obtaining written statements from defendants and framing issues---High Court further directed Secretary to Government to fix responsibility of official-defendants for having played collusive role in such proceedings and caused great financial loss to national exchequer.

Flight Lt. Anwarul Hasan Siddiqui v. Family Judge, Court No.III, Karachi and 2 others PLD 1980 Kar. 477 rel.

**(f) Civil Procedure Code (V of 1908)---**

---O. III, R.1 & O.VI, Rr.1, 14---Plaint or written statement signed only by counsel of the party and not by party himself---Validity---Counsel could not sign plaint and written statement---Written statement signed by counsel of defendant and not by defendant could not be treated as valid written statement for being against provisions of O.III, R.1 & O.VI, R.14, C.P.C.

Flight Lt. Anwarul Hasan Siddiqui v. Family Judge, Court No.III, Karachi and 2 others PLD 1980 Kar. 477 rel.

**(g) Qanun-e-Shahadat (10 of 1984)---**

---Arts. 76 & 85---Photostat copy of public document---Not admissible in evidence.

**(h) Civil Procedure Code (V of 1908)---**

---S. 2(2)---Decree---Limitation---Decree passed in violation of mandatory provisions of law---Validity---Such decree would be void ab initio and no limitation would run

thereagainst.

Malik Khawaja Muhammad and 24 others v. Marduman Babar Kahol and 29 others  
1987 SCMR 1543 rel.

**(i) Administration of justice---**

---Initial order declared to be void and illegal---Effect---Whole superstructure built on such order was bound to fall.

**(j) Civil Procedure Code (V of 1908)---**

---S. 2(2)---Void decree, execution of---Scope---State property could not be auctioned in pursuant to such decree.

**(k) Contract Act (IX of 1872)---**

---S. 2(e)---Mere verbal direction or order would not amount to a promise or condition in original agreement.

Amanullah Tareen, Addl. A.-G. for Appellants.

H. Shakil Ahmed and Zahid Muqeem Ansari for Respondents.

Date of hearing: 10th September, 2012.

**JUDGMENT**

**MUHAMMAD HASHIM KHAN KAKAR, J.---** The appellants have preferred the instant Regular Second Appeals (R.S.A.) No.03 and 04 of 2007 against the following orders:

R.S.A. No.03 of 2007:

Ex parte orders dated 9th May, 1996 and 10th March, 2004 (the "impugned ex parte orders"), respectively passed by the Qazi, Pasni (the "trial Court") and the Majlis-e-Shoora, Mekran at Turbat (the "appellate Court"), (hereinafter both the Courts are collectively referred to as the "Courts below"), whereby Civil Suit No.18 of 1996 filed by respondent No.1 Dad Bakhsh son of Rodin on or about 3rd March, 1996 for recovery of an amount of Rs.5,00,955 (Rupees five lacs nine hundred and fifty five only) against the petitioners was ex parte decreed and the appeal filed by the petitioners was also dismissed. Moreover, according to the decision of the trial Court, an amount of Rs.15,000 (Rupees fifteen thousand only) was also ex parte decreed in favour of respondent No.1 being the amount of court-fee.

Orders dated 10th March, 2003 and 23rd April, 2003 (the "impugned orders") respectively passed by the Courts below, whereby the execution application filed by respondent No.1 was accepted and the Rest House, Ormara (the "Rest House"), auctioned on the directives of the executing Court, was ordered to be handed over to respondent No.2 Muhammad Din being the highest bidder and the appeal filed by the petitioners was dismissed.

R.S.A. No.4 of 2007:

➤ Ex parte orders dated 31st March, 1996 and 18th September, 1996 (the "impugned ex parte orders"), respectively passed by the Courts below, whereby the suit filed by respondent No.1 Dad Bakhsh son of Rodin for recovery of Rs.37,58,005 (Rupees thirty seven lacs fifty eight thousand and five only) against the petitioners was ex parte decreed and the appeal filed by the petitioners was dismissed. Moreover, according to the decision of the trial Court, an amount of Rs.15000 (Rupees fifteen thousand only) was also decreed in favour of respondent No.1 being the amount of court-fee.

➤ Orders dated 10th March, 2003 and 23rd April, 2003 (the "impugned orders") respectively passed by the Courts below, whereby the execution application filed by respondent No.1 was accepted and the Rest House, auctioned on the directives of the trial Court, was ordered to be handed over to respondent No.2 Muhammad Din being the highest

bidder and the appeal filed by the petitioners was dismissed.

2. Since common questions of facts and law are involved in the matter, as such, we propose to decide both the matters through this common judgment.

3. Precise facts, leading to file these appeals, are that on or about 3rd March, 1996, respondent No.1 Dad Bakhsh son of Rodin instituted two Civil Suits Nos.17 and 18 of 1996 against the appellants i.e. Secretary, Communication and Works (C&W) Department, Executive Engineer, Sub- Divisional Officer and Sub-Engineer, Building and Roads (B&R) Department, Ormara District Gwadar for recovery of Rs.37,58,005 and Rs.5,00,955 respectively.

4. In Civil Suit No.17 of 1996, the respondent averred that he is a renown contractor of district Gwadar and in the year 1994, he was awarded a contract for construction of Ormara Basool road for an amount of Rs.10,00,000 (Rupees one million only), however, during the course of construction, the design was altered and orally an additional work worth Rs.40,00,000 (Rupees four million only) was awarded to him, which was completed by him within the stipulated period on the verbal assurance and commitment made by appellants Nos.2 and 3 i.e. Executive Engineer, Provincial B&R Division, Gwadar and Sub-Divisional Officer, B&R Sub-Division Pasni Ormara. It was further averred that the appellants have promised that they would obtain the approval of additional work from the competent authority and will make the payment; however, the commitment has not been honoured.

5. Similarly, in Civil Suit No.18 of 1996, the respondent/plaintiff averred that being a well-known and reputable government contractor of Gwadar, he was having good relations with the appellants and he used to help them whenever the appellants requested so. By this way, he used to make payments to the owner of a Filling Station, wherefrom appellants Nos.3 and 4 i.e. Sub-Divisional Officer B&R Sub-Division, Pasni and Sub-Engineer B&R Ormara, obtained oil and despite assurances, they did not make the payment. In the years 1993 and 1994, he also borne the entire expenses incurred during the course of visit of Chief Engineer and Chief Minister Balochistan on the verbal instructions of appellants Nos.3 and 4 respectively. He, from time to time, supplied different articles to appellants No.3 and 4, however, whenever he approached for return of the aforesaid amounts, lame excuses were made and despite assurances and promises, the amount so incurred/spent by him was not returned.

6. It reflects from the impugned ex parte orders passed by the trial Court that appellants No.2 and 3 were served with notices and it was presumed that appellant No.1 i.e. Secretary C&W Department was also served. It also appears that neither notice was served upon appellant No.1, nor any alternate mode for service was adopted, however, he was proceeded

against ex parte and both the suits were decreed in favour of respondent No.1.

7. Mr. Amanullah Tareen, learned Additional Advocate-General (A.A.-G.), inter alia; contended that neither appellant No.1 was served in accordance with law, nor any substitute mode of service was adopted before proceeding him ex parte and even if it is presumed that appellant No.1 was served through appellants Nos.2 and 3, the Executive Engineer of the concerned district could not have been equated or termed a valid service of summons upon appellant No.1, which, thus, rendered the impugned ex parte orders as void and nullity in the eyes of law, therefore, the limitation, in preferring appeals, beyond the period of limitation, was/is condonable and would not result in non-suiting the appellants on the ground of limitation. He further submitted that since ex parte decrees without recording evidence were passed, therefore, the same could not be sustained being illegal and void. He lastly contended that the Courts below have erred in law by deciding the disputed facts of the case on the basis of pleadings of the parties without framing of issues and recording the evidence, especially when the claim of respondent No.1 was specifically denied by appellants No.2 and 3 in their written statements.

8. Mr. Zahid Muqeem Ansari, learned counsel for respondent No.1, contended that the appeals are not maintainable being filed after the prescribed period of limitation. He further submitted that appellant No.1 was well aware about the instant litigation, as he participated in the execution proceedings and made admission and gave assurances for payment of decretal amount. He lastly contended that appellants Nos.2 and 3, being the defendants in both the suits, filed their written statements, but nowhere they denied the claim of respondent No.1 specifically within the purview of Order VIII, Rules 3 of the Civil Procedure Code, 1908 (C.P.C.), therefore, the appellants are not entitled for any relief.

9. From bare perusal of pleadings, it is noted that the allegations/ averments are verbatim. It is also noted that the allegations levelled against the appellants were with regard to the supply of certain articles, expenditure incurred by respondent No.1 on the eve of visits of Chief Engineer and Chief Minister as well as awarding of additional work. These facts could have been proved only by producing evidence showing that the appellants were responsible for payment of alleged amount, but instead of recording ex parte evidence, the Courts below in their wisdom thought it fit that there was no need to record ex parte evidence without specifying as to why there was no need for recording ex parte evidence and how the allegations, which were questions of fact would be proved without recording ex parte evidence.

10. It is well-settled by now that according to Article 119 of the Qanun-e-Shahadat Order 1984, (the "Order"), a person, who asserts/ alleges a particular fact and wants the court to believe that such fact exists, would be required to prove existence of such a fact, unless onus is fixed by law on a particular person. Similarly, according to Article 117 of the Order, the party has to prove the whole of the facts, which he alleges to entitle him to a judgment.



Furthermore, pleadings, plaint or written statement are not evidence by themselves and do not prove the assertions made therein, rather the contents thereof have to be proved through testimony given on oath and subject to cross-examination by the other side. The pleadings, which have not been confronted to the maker, are not sufficient to prove the contents of the same and cannot be read in evidence as proof of the contents stated therein.

11. The record further reflects that the ground, prevailed upon the trial Court, while deciding the suits, is that no specific denial was made by appellants Nos.2 and 3 in their written statement. There is no admission at all. The trial Court committed material irregularity and travelled beyond the scope of Order VIII, Rules 3 and 5 of the C.P.C. The trial Court has passed the orders merely on the basis of plaint and seems to be ignorant of the settled legal proposition that pleadings do not take the place of evidence. It is also a settled proposition of law that when there is a likelihood or possibility of collusion between the parties, the Court would not give judgment on the basis of their admission. Even in presence of specific, unambiguous and categorical admission, it is discretion of the Court whether to pass a decree or refuse the same. The discretion should be exercised subject to qualification regarding maintainability of the suit on legal and factual grounds. The Court should satisfy itself prior to passing of a judgment about the nature of the admission. No doubt, in this case, appellants Nos.2 and 3 did not make admission about the claim of respondent No.1, except for Rs.16,517 (Rupees sixteen thousand five hundred and seventeen only). The collusion between the plaintiff and defendants Nos.2 and 3 is also evident from the fact that the then Executive Engineer and Sub-Divisional Officer, after appearance in the trial Court at the first date of hearing, avoided appearance and remained absent, which resulted the auction of government rest house.

12. The perusal of record reflects that the proceedings right from very inception was conducted illegally. Similarly ex parte judgments/ decrees, the order made by the Executing Court inclusive of the appellate judgments/decrees and orders have been rendered in sheer violation of mandatory provision of law, therefore, are without lawful authority. Civil Suits Nos.17 and 18 of 1996, though as per the plaints appear to have been presented on 11th February, 1996 but as per the order sheets the suits were filed on 3rd March, 1996 and the next date for appearance of defendants was fixed March, 1996. Appellant No.1, resides at Quetta. How for it was possible for defendant No.1 to appear before Qazi, 'Pasni' after one day. On 5th March, 1996 defendant No. 2 at his own, without any authority requested for adjournment and the trial Court without ascertaining the factum of due service upon defendant No.1 afforded an opportunity without issuing notice to defendant No.1. On the next date of hearing i.e. 14th March, 1996 once again a request (without authority) was made by appellant No.3 (defendant No.3) on behalf of appellant No. 1, which was allowed subject to cost of Rs.500 (Rupees five hundred only) and on 24th March, 1996 appellant No.1 was proceeded against ex parte without notice and service. It is pertinent to note that the date i.e. 24th March, 1996, as mentioned herein above can never be treated as a date of hearing within the meaning of term "hearing" as contemplated by C.P.C. nor for that matter the trial Court was competent to have proceeded ex parte against defendant No.1. Similarly, the nature of subsequent proceedings would reveal that the said dates could not be treated as date of hearing. For ready reference order dated 28th March, 1996 is reproduced:

13. So on the same analogy, the impugned judgment/decreed passed on such a date is without jurisdiction. Besides, in view of the clear provisions of Order IX, Rule-6 sub-clause (c), which are mandatory in nature and direct for issuance of fresh notice. For ready reference the same is reproduced herein below:---

"When summons served, but not in due time--- (c) If it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant".

So the edifice of the plaintiff's case built on 24th March, 1996, in view of above stated facts is bound to collapse and fall because there was no occasion for the trial Court to have proceeded ex parte against appellant/defendant No.1. Moreover; the decree was drawn within the span of 28 days which is contrary to the mandate of the section 80, C.P.C.

14. Now advertent to Civil Suit No.18 of 1996, it is interested to note that besides visible infirmities and illegalities in the plaint, the trial Court vide order dated 31st March, 1996 concluded that the suit cannot be decided on the basis of available record, as all the documents annexed with the plaint are photostat copies and inadmissible in evidence. For the sake of convenience operative portion is reproduced:

15. In view of such findings, despite ex parte proceedings against respondent No.1, there was no occasion for the trial Court to have decreed the suit ex parte on 9th May, 2006 without recording evidence. So we feel no difficulty in holding that the ex parte judgments drawn by the trial Court are absolutely contrary to the admitted facts available on record. In view of glaring irregularities and illegalities, the decrees were beyond jurisdiction and, a nullity in the eye of law, as such, un-executable. But to the contrary, the appellate Court dismissed the appeal on flimsy grounds besides by holding that appeal in Suit No.18 of 1996 is barred by time. Needless to observe that the learned counsel for the appellant has confirmed the fact that the rest house is in the same condition as was delivered to him pursuant to auction.

16. It is important to note that up to passing of decree not a single summon was served upon appellant No.1. This order to the extent of proceeding ex parte against the appellant/defendant No.1 is absolutely without jurisdiction and ab initio void.

17. The suits were decreed on the basis of pleadings of parties without framing of issues and recording of evidence on the so-called assumption that the claim has been admitted in the written statement filed by defendants Nos.2 and 3. The written statements so filed could not be treated as valid written statements because the same are contrary to the mandate of Order III, Rule 1 and Order VI, Rule 14, C.P.C. The written statements were signed by the counsel and not by defendants Nos.2 and 3. The law on the subject is settled that the counsel cannot sign plaint and written statement. Reliance is placed on the judgment titled as Flight Lt. Anwarul Hasan Siddiqui v. Family Judge, Court No. III, Karachi and 2 others reported in PLD 1980 Karachi page 477:--

"The power of an Advocate, of course, does not mean or include the power to sign a plaint or written statement by him for and on behalf of his client".

18. Secondly, without prejudice to above stated legal position, the claim was absolutely denied in the written statement except for Rs.16,517. In this respect paras Nos.2 and 3 of the Suit No.17 of 1996 as well as paras Nos.1, 2, 3, 6 and 10 of the written statement are reproduced herein below:---

Paras Nos.2 and 3 of plaint:

19. Apart from the legal errors committed with respect to procedure of trial, factually the trial Court mistreated/misled itself by holding that the claim has been admitted. The judgment on the basis of admitted facts is contrary to record.

20. The perusal of para No. 2 of plaint reflects that main claim of the plaintiff/respondent is that the appellant No. 2 has awarded an additional work for Rs.40,00,000 (Rupees forty lacs only) but neither any tender was invited nor any agreement has been executed. No written order to this effect has been placed on record. Needless to observe that not a single certified or attested document was annexed with the plaint. All the annexures were photostat copies which were not admissible in evidence. Under such circumstances, there was no occasion for the trial Court to have entertained the claim on such flimsy grounds. The original work was for Rs.10,000,00 (Rupees ten lacs only). The assertion of extension of work for Rs.40,00,000 (Rupees forty lacs only) is absurd, preposterous and beyond comprehension.

21. There is no cavil to the legal proposition that a decree drawn in utter violation of mandatory provision of law is void ab initio and no limitation runs against such decree. Reliance is placed on the judgment titled as Malik Khawaja Muhammad and 24 others v.

Marduman Babar Kahol and 29 others reported in 1987 SCMR 1543, relevant at page 1544. Relevant observations therefrom are reproduced herein below:---

"As respects the question of limitation, the learned High Court found that the decree in the suit having been passed in utter contravention of the mandatory provisions of law, such order was a nullity against which no limitation could run".

Similarly, during the course of execution proceedings the Executing Court violated the law and adopted the course which is never allowed by law. All coercive methods were adopted to compel the appellants to make the payment in pursuance of decrees, which were nullity in the eyes of law. For the sake of convenience the attachment order is reproduced:---

22. Now advertent to the submissions made by Mr. H. Shakil Ahmed, learned counsel for respondent No.2, who maintained that Muhammad Din son of Ibrahim is a bona fide purchaser, his rights are protected under the law, is also without any substance, as it is settled principle of law that if the initial order is declared void and illegal then the whole structure created thereon is bound to fall. It is important to note that while going through the record at page-170 the capital cost for the construction of B&R Rest House, Ormara incurred was Rs.44,89,350, whereas the cost of land is not included. It is painfully observed that the State property worth of billions of rupees was auctioned on worthless price, which apparently was an act of collusion between plaintiff, the auction-purchaser and defendants Nos.2 and 3. The Executing Court failed to understand that the State property cannot be auctioned pursuant to a decree, which is nullity, void and non-existent. As per claim of respondent No.1 the appellants Nos.2 and 3 verbally agreed to pay the expenses to be incurred for additional work as well as expenditure made by him at the eve of visits of Chief Minister and Chief Engineer etc. We are of the considered view that the verbal direction would not amount a condition to the agreement under which the work was accomplished unless the agreement is duly amended by adding any fresh condition with approval of the competent authority. In absence of any such agreement, the government would not be under any legal constraint to pay the said amount because mere verbal order of the appellants would not amount to promise made on behalf of the government department, unless it is duly made in writing and sanctioned/ accorded by the competent authority. If any officer of the department verbally passed the direction without sanction of the competent authority, it is within the right of respondent No.1 to claim such amount in his private capacity, but not being an officer/official in his official capacity. The record also reflects that at the relevant time, Mr. Abdul Majeed Shah and Mr. Munir Ahmed Baloch were holding the charge of Executive Engineer and Sub-Divisional Officer B&R Department, thus, respondent No.1 is at liberty to file a suit for recovery of the alleged amount incurred by him at the eve of visit of Chief Minister and Chief Engineer against them in their private capacity.

23. Resultantly, we are inclined to accept R.S.A. Nos.3 and 4 of 2007 and set aside the impugned judgments and decrees passed by trial Court i.e. Qazi Pasni, appellate Court i.e.

Majlis-e-Shoora Mekran at Turbat and orders passed by executing Court i.e. Qazi Pasni and Majlis-e-Shoora during execution proceedings are hereby set aside. Both the suits are remanded to the trial Court with the direction to obtain written statement from appellants and thereafter to frame proper issues and decide the case by adhering to the provisions of Order XIV, Rule 2, C.P.C. Consequent upon setting aside of the judgments and decrees mentioned hereinabove, the Deputy Commissioner Gwadar is directed to take possession of B&R Rest House Ormara from Din Muhammad son of Ibrahim (auction-purchaser) and deliver the same back to the appellant No.1 within a period of one month positively from the receipt of date of this judgment and mutation entries carried out in favour of bidder i.e. respondent No.2 are hereby cancelled and the earlier mutation entries carried out in favour of Government of Balochistan are hereby restored. Necessary correction in the revenue entries in the light of this judgment be made.

24. Before parting with the judgment, we considered it necessary to reiterate that the frequency, with which cases are coming up, wherein the government officials are found to be obliging the parties with regard to their illegal claims and the matters wholly unconcerned with their job descriptions for erroneous considerations. We are in agreement with the learned A.A.-G. that the entire process initiated by respondent No.1 with collusion of the then Executive Engineer and Sub-Divisional Officer (B&R) department smacks of mala fides, fraud and misrepresentation, besides lacking legal sanctions. The respondent No.1 is directed to fix the responsibility of all the delinquent officers who have played a collusive part in the proceedings and have caused great financial loss to the National Exchequer. The Registrar of this Court to send copy of the instant judgment to the Chief Secretary, Government of Balochistan as well as Deputy Commissioner, Gwadar with the direction to ensure compliance of the directions against the delinquent officers by taking positive action, of course by providing fair opportunity to them. The result of action, so taken by him should be submitted for our perusal in chamber.

25. The appeals are, accordingly, disposed of on above terms. Decree sheet be drawn. Parties are left to bear their own costs.