2012 Y L R 1891

[Balochistan]

Before Mrs. Syeda Tahira Safdar, J

SALEH MUHAMMAD---Petitioner

Versus

MUHAMMAD ISHAQUE and 2 others---Respondents

Civil Revision No.258 of 2010, decided on 23rd January, 2012.

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

----O.V Rr. 15 & 20---Specific Relief Act (I of 1877) S. 42----Plaintiff's suit for declaration seeking his right of being the lawful allottee of government accom-modation was decreed concurrently---Contention of the defendant was that he was not served notice of appearance by the Trial Court and that service was effected on female members of his family, which was not a valid service---Validity---Several notices were issued by the Trial Court which were returned---Summonses were not received by any female member of the defendant' s family and due to non-service, the mode of substituted service provided in Order V, Rule 20 of the C.P.C. was adopted---Record showed that the summons was affixed on the outer door of the house of the defendant which was in his possession and he was in knowledge of the proceedings, but failed to appear and contest the proceedings, there was, therefore, no illegality in the proceedings.

(b) Specific Relief Act (I of 1877)---

----S.42---Residential Accommodation at Quetta (Procedure for Allotment) Rules, 2009 R.8---Suit for declaration seeking right and possession of Government accommodation---Maintainability---Subject matter of the suit was not a case of out of turn allotment---Plaintiff being the allottee of house in question was not aggrieved of the order of the authorities but was rather seeking possession on basis of an allotment order made in his favour by the competent authority and therefore, the suit was maintainable.

Mujeeb Ahmed Hashmi for Petitioner.

Khan Muhammad for Respondent No.1.

Amanullah Tareen for Official Respondents.

Date of hearing: 23rd September, 2011.

JUDGMENT

MRS. SYEDA TAHIRA SAFDAR, J.---The petitioner feeling aggrieved of the judgment dated 8th February, 2010 of Senior Civil Judge-I, Quetta, whereby the suit filed by respondent No.1 was decreed, and the judgment dated 18th May, 2010 of Additional District Judge-I, Quetta, whereby the appeal preferred by him was dismissed, and judgment of the trial court was upheld, filed instant revision petition. Both the orders were challenged on grounds that the decree was obtained with ulterior motive, while no notice served on the petitioner. Furthermore, he was out of the station, while the ladies were in the house; therefore, the service on female members of the family is not deemed to be valid service. Therefore, in the circumstances, he was not validly served, thus condemned unheard. But the courts below failed to consider this aspect of the case, and arrived to the findings contrary to law. It was further his contention that his appeal was not hit by limitation, but the appellate court failed to observe legal position, and failed to consider Articles 164 and 81 of the Limitation Act, 1908, and dismissed the appeal treating it to be time-barred, thus made an error. It was further contended that the suit was fixed for formal hearing, but order was passed against him. It was prayed that both the orders be set aside, and the case be remanded to the trial court for deciding it afresh.

2. The perusal of the record reveals that the respondent No.1 filed a suit seeking declaration of his right being lawful allottee of Government Accommodation bearing No.T-

322, Whyte Road, Quetta, allotted in his favour through order dated 10th September, 2009 by the competent Authority. It was further his case that defendant No.3/present petitioner is in illegal occupation of the premises in question, and failed to hand over vacant possession despite effecting of several ejectment notices, therefore, he be declared as such, and possession be handed over to him. The perusal of the papers attached with the revision petition further reveals that the present petitioner was proceeded against ex parte due to his non-appearance despite effecting of service. While the official defendants/present respondents Nos.2 and 3 consented for acceptance of the suit filed by respondent No.1. In view of the consent so made the trial court through order dated 8th February, 2010 decreed the suit as prayed for. The petitioner preferred appeal against the order, which was decided by the appellate court through order dated 18th May, 2010, and concluded that there is delay in filing of the appeal, which also explained; therefore, the appeal was dismissed being time-barred. Still feeling aggrieved instant revision petition has been filed with the contentions as narrated hereinabove.

3. This is a case whereby a right is claimed in respect of Government Accommodation, and an entitlement to occupy the premises being validly allotted in favour of a government servant. The respondent No.1 claimed his right on basis of an allotment order made in his favour through order dated 10th September, 2009, with further plea that the premises is in illegal occupation of the petitioner from last 30 years. It is apparent from the record that the suit was allowed with the consent of official the defendants the competent Authorities, in absence of the petitioner. While the appeal preferred by him was rejected, without going into merits of the case being filed beyond provided period. The petitioner further challenged the order of the appellate court on ground that the period of limitation was not correctly counted, therefore, made an error. He referred to Articles 164 and 81 of the Limitation Act, 1908. It seems that the petitioner overlooked while referring to Article 81 of the Limitation Act, which in no way is attracted in present case. It seems that Article 181 of the Limitation Act, 1908 was wrongly mentioned as Article 81 of the Act. Article 181 of the Limitation Act, 1908 is applicable to an application for which no period of limitation is provided else where in the Schedule or section 48 of Civil Procedure Code. It provides a period of three years, which is to be counted when the right to apply accrues. As far as Article 164 of the Limitation Act, 1908 is concerned, it provides a period of 30 days for filing an application for setting aside of an ex parte decree filed before the same court. But in present case both these Articles are not attracted, because no application was filed by the petitioner for setting aside of a decree passed ex parte. Rather, the petitioner filed an appeal seeking setting aside of ex parte decree. Therefore, in the circumstances, the Article 152 of the Limitation Act, 1908 will be applicable, which provides a period of thirty days for filing an appeal to the court of District Judge, and the time is to be counted from the date of decree or from the order appealed from. Keeping in view the relevant Article admittedly the decree was passed on 8th February, 2010, while the appeal was preferred on 15th March, 2010 with a delay of six days and according to the findings of the appellate court the delay so occurred was not explained. Before this court also the petitioner failed to disclose the reason, which restrained him for approaching the appellate court in time.

4. Apart from the same, during course of this petition the learned counsel for the parties were asked that whether a suit for declaration, and permanent injunction is competent in

respect of Government accommodation. The learned Additional Advocate-General referred to Rule 8 Sub-Rule (5) of the Residential Accommodation at Quetta (Procedure for Allotment) Rules, 2009, and contended that the appeal was required to be filed before the Chief Secretary. While according to the learned counsel for the petitioner the referred Rule is not applicable in present case, the suit was very much competent. While the learned counsel for respondent No.1 did not answer the query, while it was his argument that rent is deducting from his salary, as such he is entitled for possession of the premises. Though the accommodations vests with the Government are dealt with the Residential Accommodation at Quetta (Procedure for Allotment) Rules, 2009. But the quoted Rule 8 is not applicable in the matter, as it is not a case of out of turn allotment. Even otherwise, in present case the respondent being allottee of house in question is not aggrieved of order of the Authority, rather he is seeking possession on basis of an allotment order made in his favour by the competent Authority. Therefore, in the circumstances, the suit was competent.

5. Now reverting to the merits of the case, which needs consideration, because a specific stance has been taken by the petitioner that he was not properly served by the trial court, and decree was passed behind his back. Further, he did not give any power to Mr. Tahir Iqbal Khattak, Advocate, to represent him. But his contentions did not find support from the material on record. It disclosed that several notices were issued by the trial court, after registration of the suit, which returned unserved. But the service was effected through affixation on the outer door of his residence. It is not denied by the petitioner. Rather, he raised contention that he was out of station, while female members of his family were at home, therefore, service on female members was not legal. Though as per previsions contained in Order V, C.P.C., the summonses are to be issued by the court, where the proceedings are pending, and to be served on each defendant in person, or on his agent. While Rule 15 the Order provides service of summons on male members defendants family. This Rule reads as under:--

"Order-V Rule 15, C.P.C. Where service may be on male member of defendant's family.---Where in any suit the defendant cannot be found and has not agent empowered to accept service of the summons on his behalf service may be made on any adult member of the family of the defendant, who is residing with him.

Explanation. A Servant is "not a member of the family within the meaning of this rule."

But in present case the summons was not received by any female member of his family. Rather due to non-service the mode of substituted service as provided in Rule 20 of the Order-V of C.P.C. was adopted. The Rule reads as under:--

"Order-V Rule 20, C.P.C. Substituted Service.---(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order for service of summons by--

(a) affixing a copy of the summons at some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain; or

(b) any electronic device of communication which may include telegram, phonogram, telex, fax, radio and television; or

(c) urgent mail service or public courier services; or

(d) beat of drum in the locality where the defendant resides; or

(e) publication in press; or

(f) any other manner or mode as it may think fit:

Provided that the Court may order the use of all or any of the aforesaid manners and modes of service simultaneously.

(2) Effect of substituted Services.---Service substituted by order of the Court shall be an effectual if it had been made on the defendant personally.

(3) Where service substituted, time for appearance to be fixed.---Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require, which shall not ordinarily exceed fifteen days."

Keeping in view these provisions a legal mode was adopted by the trial court for effecting the service, there was no illegality. From the papers on record it is very much apparent that the summons was affixed on the outer door of house in his (petitioner's) possession, and he was in knowledge of the proceedings, but failed to appear, and contest the proceedings. There is no illegality in the proceedings.

6. In addition it is also an admitted position that no allotment order had been issued in his favour of the petitioner in all these years, and he is occupying the premises for a period of more than thirty years, which is highly unfortunate. The petitioner may have approach approached the competent Authority under relevant Rules i.e. The Residential Accommodation at Quetta (Procedure for Allotment) Rules, 2009, if he had any grievance. Rather he managed to linger on the matter on one pretext or the other for a quite considerable tue, which is highly unfortunate, and objectionable. The conduct of the concerned Authorities also showed their negligence, and in-competency, in exercise of their power vests with them. The suffering is on the part of respondent No.1, which is again unfortunate.

7. Keeping in view the above discussion the petitioner has failed to make out a case in his favour. The petition is hereby dismissed being without merits, with no orders as to costs.

K.M.Z./9/Q Petition dismissed.