

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Mr. Justice Yahya Afridi
Mr. Justice Amin-ud-Din Khan
Mrs. Justice Ayesha A. Malik

Civil Petition No.925-L of 2018

*Against the order dated
30.01.2018 passed by the Lahore
High Court in W.P.No. 40075 of
2015.*

Rashid Baig etc.

....Petitioners

Versus

Muhammad Mansha etc.

....Respondents

For the petitioners:

Syed Muhammad Kalim Ahmad
Khurshid, Sr.ASC.

For the respondents:

N.R.

Date of Hearing:

29 April 2024

ORDER

Amin-ud-Din Khan, J. Through this petition filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 leave has been sought against the order dated 30.01.2018 passed by the Lahore High Court whereby Writ Petition No. 40075/2015 filed by the petitioners was dismissed.

2. Petitioners-defendants moved applications for summoning of revenue officers etc as witness, same were dismissed vide order dated 2.3.2013, which was challenged through revision petition and revision also met with the same fate. They challenged the said two orders of the trial court and the revisional court through constitutional jurisdiction of the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The writ petition was also dismissed.

3. When a party challenges any interim order during the pendency of a suit under revisional jurisdiction or constitutional jurisdiction vested in the revisional court or the High Court, we are of the view that the court has to exercise the jurisdiction keeping in view that it is an interim order, as every interim order need not to be challenged at that stage because it

is now settled that when a suit is finally decided by the trial court, all the interim orders become open in appeal, if there is a defect in the interim order that is open to scrutiny at the stage of final appeal, as the first appeal is continuation of a trial and first appellate court is a court of fact and law. But, if a party to the suit opts to challenge an interim order when it is passed through appellate jurisdiction, revisional jurisdiction or constitutional jurisdiction, while exercising such jurisdiction the scope of jurisdiction vested in the Court must be in the view of the party challenging the same and we expect that while dealing with the interim order the court must also keep in view the scope of jurisdiction to scrutinize the interim orders.

4. We are clear in our mind that when a party comes to the High Court in constitutional jurisdiction, he is bound to show that the order challenged through the constitutional jurisdiction is without jurisdiction then the High Court can exercise the constitutional jurisdiction to declare the order as such. When an order has been passed while exercising discretion, the same cannot be declared by any stretch of imagination to be without jurisdiction, therefore, the High Court has rightly exercised the jurisdiction while dismissing the writ petition as the orders impugned before the High Court were with jurisdiction while exercising discretion in favour of the vigilant party.

5. We have gone through the report submitted by learned Civil Judge 1st Class, Ferozewala whereby it is stated that when the Civil Revision was pending, the learned revisional court ordered for restraining the Trial Court from pronouncement of final judgment but the learned trial court sine die adjourned the proceedings of the case vide order dated 25.03.2013. Thereafter, the learned trial court restored the proceedings of the suit when again the present petitioners-defendants filed an application for sine die adjournment of the case on the ground that matter is pending adjudication before the Supreme Court of Pakistan but their application was dismissed on 24.10.2023 and now matter is fixed for filing of reply to application for setting aside the exparte proceedings filed on behalf of defendant Nos. 53, 54 and 55 vide report forwarded by learned District & Sessions Judge, Sheikhpura. We have further noticed that the suit was filed on 27.05.2004 which is still pending and due to the petitioners-defendants matter is being delayed. When confronted with the learned counsel for the petitioners that whether the witnesses i.e.

Patwari who entered the mutation in the year 1956 challenged through the suit are alive or not, learned counsel is unable to state that whether they are alive or not. In these circumstances, we cannot disagree with the learned High Court when the learned High Court has dismissed the writ petition when there was no jurisdictional defect in the orders passed by the fora below. In view of the above, no case for grant of leave is made out. Resultantly, leave is refused. Petition stands dismissed.

6. Before parting with this judgment we deem it necessary to comment upon the eventuality which is repeatedly being seen in the proceedings of various cases, when the matter is pending before the High Court or this Court, the learned trial court on the move of any of the parties or even without reference of any of the parties stays the proceedings of the trial court or the proceedings of the execution or sine die adjourn the same in order to wait for the final determination or decision of the Court. In the instant matter original applications, subject matter of this petition, were dismissed by the learned trial court on 2.3.2013 whereas revision petition was dismissed on 6.11.2015 and the writ petition was dismissed on 30.1.2018 and this CP is pending before this Court since the year 2018, when it was fixed for hearing, learned counsel for the petitioners sought adjournment, therefore, we sought report from the learned trial court and it was reported that the learned revisional court vide order dated 11.3.2013 restrained the learned trial court from pronouncement of final judgment and the learned trial court vide order dated 25.3.2013 sine die adjourned the file of the suit. Subsequently, on 25.09.2019 the learned trial court's file was restored. Again an application to sine die adjourn the case was filed on behalf of the defendants/petitioners herein with the contention that the matter is pending adjudication before the august Supreme Court of Pakistan and the said application was dismissed by the learned trial court vide order dated 24.10.2023 and matter is now pending before the learned trial court for setting aside the exparte proceedings against defendant Nos. 53, 54 and 55. It is vide report of the learned trial court dated 26.02.2024. Order XX Rule 1 of the Supreme Court Rules, 1980 deals with the eventuality in hand, which is reproduced:

“The filing of a petition for leave to appeal or an appeal shall not prevent execution of the decree or order appealed against, but the Court may, subject to such terms and conditions as it may deem fit to impose, order a stay of

execution of the decree or order, or order a stay of proceedings, in any case under appeal to this Court.”

It clearly shows that the execution proceedings as well as the proceedings before the learned trial court do not automatically stay when the petition is filed before this Court unless an injunctive order is granted by this Court. When the injunctive order is not granted by this Court the parties to the proceedings applying for stay of the proceedings or execution without any injunctive order from this Court and in some eventualities we have seen that after refusal of injunctive order from this Court the parties to the proceedings before the learned trial court apply for stay of execution or proceedings in the suit which is not only a clear cut abuse of process of law but it is contempt of court. We observe that if this practice is carried on by the parties or even learned trial court while ignoring all these factors i.e. sine die adjourning the proceedings or stays the proceedings of the suit without any injunctive order, will face the consequences of said illegal order.

Islamabad
29 April 2024.
Mazhar Javed Bhatti

APPROVED FOR REPORTING.