

Judgment Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

R.A. No. 282 of 2018

[Muhammad Haroon vs. Muhammad Qasim & another]
&

R.A. No. 283 of 2018

[Habibullah vs. Muhammad Qasim & another]

Applicant : Through Mr. Shaukat Ali Birhamani, Advocate

Respondents : Muhammad Punhal for himself as well as being attorney and son of Muhammad Qasim is present

Date of Hearing : 05.05.2025

Date of Announcement: 26.05.2025

J U D G M E N T

ARSHAD HUSSAIN KHAN, J.- By this consolidated order, I intend to decide the captioned revision applications as the same pertains to similar issue / facts between the parties [respondents].

Applicants namely; Muhammad Haroon and Habibullah have filed these Civil Revisions being aggrieved by the judgments dated 22.6.2018, passed by learned 1st Additional District Judge, Dadu, whereby Civil Appeal Nos. 20 & 22 of 2016, filed by them were dismissed while maintaining the judgment [dismissal of suits] of Senior Civil Judge, Dadu, passed in F.C. Suit Nos. 106 of 2015 & 45 of 2015 filed by the applicants respectively.

2. Briefly the facts giving rise to the present revision applications are that Respondent-Muhammad Qasim filed direct complaint, bearing Cr. Misc. Application No. 15 of 2013 under Sections 3 & 4 of Illegal Dispossession Act, 2005, against one Muhammad Ishaque and witnesses [Habibullah and Muhammad Haroon] regarding fake sale agreements, alleged to have been executed by the respondents. The said Cr. Misc. Application was dismissed, vide order dated 03.08.2013, which was challenged before this Court in Cr. Revision Application No. S-136 of 2013, which was also dismissed, vide order dated 12.2.2015 on the ground that the dispute is pending before the civil court, which is

competent to determine the status of the sale agreement. Upon dismissal of above Revision Applications, applicant Habibullah filed F.C. Suit No. 45 of 2015 and Muhammad Haroon filed F.C. Suit No. 106 of 2015 claiming damages of Rs. 50,00,000/- for malicious prosecutions. Respondents-Muhammad Qasim and Muhammad Punhal filed application under Order VII Rule 11 CPC in both the suits, which after hearing the parties were allowed and the plaint in both the suits were rejected, vide common order dated 01.3.2016. Both the orders were challenged in Civil Appeal Nos. 20 & 22 of 2016, which were also dismissed, vide common order dated 22.06.2018, hence the instant Civil Revision Application Nos. 282 of 2018 (re-Muhammad Haroon v. Muhammad Qasim and others) and R.A. No. 283 of 2018 (re-Habibullah v. Muhammad Qasim and others).

3. Learned counsel for applicants in Civil Revision Application Nos. 282 & 283 of 2018 argued that both the courts below without considering the contents of plaint summarily rejected the same under Order VII Rule 11 CPC which caused miscarriage of justice; that both the courts below did not consider the settled principle of law that the matter must be decided after providing opportunity of hearing to the parties to lead evidence for proving their claim. Lastly, learned counsel prayed that these revision applications may be allowed.

4. Conversely, respondent-Muhammad Punhal appearing in person for self and being attorney of his father-Muhammad Qasim supported the impugned judgments.

5. Heard learned counsel for the applicants and respondent as well as perused the material available on record.

6. From perusal of the record, it appears that upon culmination of proceedings filed by the respondent-Qasim under Illegal Dispossession Act, the present applicants filed suits for damages for malicious prosecution against the present respondents. Upon notice of the case, respondent filed application under Order VII Rule 11 of CPC for rejection of the plaint. The trial court after hearing the learned counsel for the parties allowed the applications; consequently the plaints of the said suits were rejected. The said order was subsequently upheld by the appellate court in the civil appeals preferred by the present applicants

against the order of trial court. Being aggrieved and dissatisfied with the concurrent findings of the courts below, the applicants filed the present revision applications.

7. Before going into further discussion, it would be appropriate to reproduce the relevant portions of the order dated 01.03.2016 whereby the complaints of the suits filed by the applicants were rejected, as under:

“Further I find that the plaintiff was not prosecuted in the application u/s 3 & 4 of Illegal Dispossession Act 2005 as it was not brought on regular file and was dismissed preliminary. Such application was dismissed on technical points and not in favour of the plaintiff. The Honorable Supreme Court of Pakistan in a Judgment reported in PLD 1990 SC 28 has laid down the following test for malicious prosecution:-

- (i) That the plaintiff has been prosecuted by the defendant;
- (ii) That the prosecution ended in plaintiff's favour;
- (iii) That the defendant acted without reasonable and probable cause;
- (iv) That the defendant has acted by malice;
- (v) That the proceedings had interfered with plaintiff liberty and also affected his reputation; and finally the plaintiff suffered damages.

The averments of the complaint show that the plaintiff has not shown any of the ingredients to claim his damages. The plaintiff failed to show any malafide or ulterior motive of the defendants; that the prosecution has not ended in favour of the plaintiff. Further such complaint was neither proceeded nor the plaintiff was prosecuted and he was not acquitted in such application on the ground of benefit of doubt or false allegation on the part of defendant, hence there is no malice on the part of defendant. Further the damages claimed by the plaintiff are not specifically described that he sustained loss of Rs.50,00,000/-. Further the plaintiff has also not shown any proof that how his reputation was affected on the application filed by the defendant.

Now it is well settled principle of law that incompetent suit must be buried at the initial stage. Reliance is placed upon 1998 CLC Karachi 382, 2011 CLC 88 [Karachi], 2007 SCMR 741”

8. Precisely, in the instant case, the stance of the present applicants is that both the courts below while passing the impugned orders have failed to consider the fact that the matter must be decided on merits after giving full opportunity to the parties to lead evidence in support of their case.

9. Admittedly, the suits brought by the plaintiffs/applicant(s) claiming damages of Rs. 50,00,000/- for malicious prosecution in

respect of the proceeding which were dismissed at the initial stage without being proceeded, as the same did not fall within the criteria laid down by the supreme Court in case of *Muhammad Akram v. Farman Bi* [1990 SC 28]. Thus, the applicants lack cause of action to maintain their respective suits.

10. The Supreme Court of Pakistan in the case of *Pakistan Agricultural Storage and Services Corporation Ltd. v. Mian Abdul Latif and other* [PLD 2008 SC 371] while dilating upon the object of Order VII Rule 11 of CPC, inter alia, has held as under:

“6.It may be noted here that object of Order VII rule 11 C.P.C., is primarily to save the parties from rigors of frivolous litigations at the very inception of the proceedings and if the court on the basis of averments made in the plaint and documents available comes to the precise conclusion that even if all the allegations made in the plaint are proved; the plaintiff would not be entitled to the relief claimed, then the court would be justified to reject the plaint in exercise of powers available under Order VII, Rule 11 C.P.C. In this view, we are fortified by a judgment of this Court delivered in the case of S.M. Shafi Ahmad Zaidi through legal heirs v. Malik Hassan Ali Khan (Moin) through legal heirs 2002 SCMR 338, wherein it was held that while disposing of application under Order VII, Rule 11, C.P.C, besides averments made in the plaint, other material available on record, which on its own strength, is legally sufficient to completely refute the claim of the plaintiff, can also be looked into. It was further held in the above judgment that requirement of law is that incompetent suit should be buried at its inception and it is in the interest of litigating parties and judicial institutions itself, because it would save time and expenses of the parties and the courts would get more time to devote it for the genuine causes.”

11. Besides above, under Section 115, C.P.C., the revisional jurisdiction of the High Court is confined to questions of jurisdiction alone that is, where a subordinate court has exercised a jurisdiction not vested in it, has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. It is a settled principle that if a court has jurisdiction over a matter, it may decide it rightly or wrongly. Mere fact that its decision is erroneous in law does not amount to illegal or irregular exercise of jurisdiction. To invoke Section 115, the applicant must demonstrate a defect in procedure or a disregard of legal provisions amounting to a jurisdictional error. Mere errors of law or fact are correctable in appeal, not in revision. In the present case, no jurisdictional defect or material irregularity has been shown to warrant interference with the impugned

decisions. Reliance can also be placed on the case reported as *Khudadad vs. Syed Ghazanfar Ali Shah* [2022 SCMR 933].

12. In view of the foregoing discussion, no illegality, irregularity or jurisdictional defect is found in the concurrent findings of the courts below warranting interference by this Court. Hence, these Revision Applications being devoid of merit are dismissed along with pending application(s), if any.

JUDGE

karar_hussain/PS*