IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision Application No. S-06 of 2019

Applicant	:	Through Miss Seema Abbasi Advocate, along with Applicant
Respondents No.1 & 2	:	Mr. Abdul Waheed Abbasi Assistant Director NADRA.
Respondent No.3	:	Federation of Pakistan, through Mr. Abdul Resheed Abro, Assistant Attorney General.
Date of hearing:	:	07.10.2019

JUDGMENT

ARSHAD HUSSAIN KHAN, J. Through instant Civil Revision Application, the applicant has called in question the judgment & decree [dismissing the Suit of the applicant] dated: 20.08.2018 & 25.08.2018 respectively, passed by the learned Senior Civil Judge Mehar in F.C Suit No.13 of 2018 and order dated 07.12.2018, passed by the Court of IInd Additional District Judge, Mehar, in Civil Appeal No.42 of 2018, whereby the said appeal was also dismissed.

2. Briefly the facts of the present case are that the applicant/plaintiff filed suit for declaration and necessary correction in respect of the date of birth in his CNIC issued by respondent-NADRA, claiming therein that his actual date of birth is 01.05.1963 whereas in the CNIC it has been wrongly mentioned as 01.01.1964. The said suit was contested by the respondent-NADRA and the learned trial court after recording evidence of the both the sides dismissed the suit, vide judgment and decree dated 20.08.2018 & 25.08.2018. The applicant preferred civil appeal against the said judgment and decree before the District Judge, Dadu. But subsequently, said appeal was withdrawn by the applicant on 25.09.2018. However, later on, the applicant again filed appeal on 07.11.2018 on which the learned IInd Additional District Judge, Mehar, passed the order dated 07.12.2018 dismissing the civil Appeal. The

applicant impugned the judgment and decree of the trial court as well as learned lower appellate court in the present revision application.

3. Upon service, Assistant Director NADRA appeared before the court on behalf of the respondents-NADRA and has denied the allegations and the case of the Applicant as setup in the plaint as well as in the present case and prayed for dismissal of the present Revision Application.

4. The learned counsel for the applicant during her arguments while reiterating the facts has contended that the orders impugned herein are not sustainable in law and fact both. It is contended that the learned courts below while passing the impugned orders have failed to consider the material/evidence available on the record. It is also contended that the learned courts below have failed to apply their judicious mind. Further contended that the learned lower appellate court has decided the civil appeal of the applicant purely on the technical ground as the learned lower Appellate court has failed to consider the material fact that earlier appeal was withdrawn by the applicant due to inadvertence and misunderstanding on the ground to approach the service tribunal, which, in fact, is not the proper forum for seeking correction in the CNIC issued by NADRA. The applicant upon coming to know about said mistake immediately filed the civil Appeal order whereof is impugned in the present proceedings. It is also contended that it is well settled that the court should decide that case on merits rather than on technicalities.

5. Conversely, representative of respondents-NADRA while supporting the judgment impugned has contended that the judgment and decree passed by the learned trial court as well as the order of learned lower appellate court are in accordance with the law and based on the material and evidence available on the record and as such do not warrant interference by this court in the present proceedings. Lastly, argued that the present revision application is liable to be dismissed.

6. Learned Assistant Attorney General also supported the impugned judgments and prayed for dismissal of the present revision application.

7. I have heard the arguments of learned counsel for the applicant, representative of respondent-NADRA and learned Assistant Attorney General with their assistance and have perused the material available on the record.

8. Record transpires that from the pleadings of the parties, learned trial court framed the following issues:

> "i. Whether the real and correct date of birth of the plaintiff is 01.05.1963 and not 01.01.1964?
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> ii. Whether the suit of the plaintiff is not maintainable?
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> iii. Whether the suit of the plaintiff is barred by any law?
>
> iv. Whether the plaintiff is entitled for the relief as claimed by him?
>
> v. What should the decree be?"

Subsequently, evidence were led by the parties and after hearing the arguments of the learned counsel for the parties, learned trial court dismissed the suit of the plaintiff vide judgment dated 20.08.2018 and decree dated 25.08.2018. Relevant portion whereof for the sake of ready reference are reproduced as under:

> "**ISSUE No.3**.
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> This is most important legal issued which is taken first for discussion and decision. The burden to prove this issue lies upon the defendants.
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> The defendants in their written statements have taken plea that the suit of the plaintiff is barred under law of limitation as the plaintiff applied and obtained his C.N.I.C. in the year, 2004 on the basis of his MNIC and filed the instant suit on 20.01.2018, it means the plaintiff has filed the instant suit after lapse of 14 years for correction of his date of birth in his C.N.I.C. In this regard D.W-1 has reiterated the version of written statement and further he in his cross-examination has deposed that the plaintiff after obtaining his CNIC in year, 2004, never approached their office for correction in his date of birth. In addition to this the plaintiff himself in his cross examination has admitted that his date of birth recorded in MNIC was 1964, it means that defendants had rightly issued the C.N.I.C. to the plaintiff mentioning his date of birth as 01.01.1964, as recorded in his MNIC. The plaintiff in his Examination-in-Chief has further admitted that he got service in the year, 1989 on the basis of his own MNIC. The learned advocate for the plaintiff could not succeed to rebut D.W-1 in favour of the plaintiff. The learned advocate for the plaintiff even otherwise has not shattered the main and basic question which relates to the period of Limitation from D.W-1. However, the plaintiff merely submitted in his Examination-in-Chief that he has approached several times for correction in his date of birth in the C.N.I.C. to the

defendant No.1 in order to cover his limitation without bringing any record in writing to justify the period of limitation. The defendants have succeeded to prove this issue while the plaintiff has failed to rebut the same with reliable evidence. Thus, the issue No.3 is decided in affirmative.

ISSUE No.2.

This is also second most important legal issue which is taken for discussion and decision. The burden to prove this issue lies upon the defendants.

The defendants have taken the plea in their written statements that the suit of the plaintiff is not maintainable. In this regard, D.W-1 in his examination-in-chief deposed that the plaintiff after obtaining his C.N.I.C. had never approached their office for correction within the period as stipulated under SOP rules. The learned advocate for the plaintiff has not cross-examined D.W-1 on this point. The plaintiff as P.W-1 has failed to produce any application in writing to which show that he had in fact approached the defendants for correction in his CNIC. within the period as stipulated under SOP rules of NADRA. The defendants, therefore, proved this issue. Thus, the issue No.2 is decided in affirmative.

ISSUE No1.

The burden to prove this issue lies upon the plaintiff.

The plaintiff in support of this issue has examined himself as P.W-1, and has produced duplicate 5th standard/primary school leaving certificate, original SSC-Part-II/Matriculation pacca certificate and original service book.

As against the defendants have examined D.W-1 who has produced the scan copies of RG-3 and C.N.I.C. forms of the plaintiff.

From the perusal of the record, it reveals that the plaintiff had applied and obtained MNIC on the basis of his own information (RG-3 Ex:No.10-A). From the perusal of record, it further reveals that the plaintiff filled up his C.N.I.C. Form (Ex.10-B) on the basis of his own MNIC and such C.N.I.C. was rightly issued to the plaintiff by NADRA. The plaintiff has himself corroborated the version of D.W-1 by admitting in his cross-examination that his date of birth recorded in his MNIC is 1964, so also he admitted that he got service in the year, 1989 on the basis of his MNIC. It means the plaintiff concealed and suppressed his academic certificates to obtain his MNIC and on the basis of which C.N.I.C. was issued to the plaintiff and the plaintiff himself continued to keep in possession his MNIC and C.N.I.Cs. and used the MNIC to get Government service. In the given circumstances, the defendants had rightly issued C.N.I.C. to the plaintiff on his own information. Therefore, the plaintiff has failed to prove this issue without bringing any believable evidence on record. Thus, the issue No.1 is decided in negative.

Issue No.4.

In view of my discussion and so also the decision arrived in issues No.1 to 3, I have arrived at the conclusion that the plaintiff is

not entitled for the relief as claimed by him. Thus, the issue No.4 is decided in negative."

9. The Applicant/plaintiff having aggrieved by the above said judgment and decree, preferred an appeal before the Court of IInd Additional District Judge, Mehar but subsequently the said appeal was withdrawn, however, later on the applicant again filed Civil Appeal against the judgment and decree, which was dismissed by learned IInd Additional District Judge, Mehar, vide its order dated 07.12.2018. The applicant, having aggrieved by the aforesaid order, challenged the same in the present civil revision application. Relevant portion of the order dated 07.12.2018 for the sake of ready reference is reproduced as under:

"I have considered above contentions. First legal aspect of appellant's case is that he himself had not pressed his appeal No. 42/2018 in this court on 25.09.2018, thus appellant himself had relinquished his right of appeal by not pressing his appeal No.42/2018. The instant appeal had been filed on 07.11.2018 against same judgment and decree dated 20.08.2018 and 25.08.2018, beyond limitation time and there is no explanation from appellant side that why the instant appeal could not be filed within time and what were the circumstances which prevented him from filing of appeal within time. In these circumstances, it appears that the appeal is not only time barred, but at the same time second appeal at the same forum was not competent, since earlier appeal filed by appellant was dismissed as not pressed whereby appellant himself had relinquished his right of appeal. The instant appeal therefore, is not maintainable in these circumstances, therefore, it is dismissed in limine. Order accordingly."

10. It is well settled that revision is a matter between the higher and the subordinate Courts and the right to move an application in this respect by the Applicant is merely a privilege. The provisions of Section 115, C.P.C., have been divided into two parts; First part enumerates the conditions under which the Court can interfere and the second part specify the type of orders, which are susceptible to revision. In numerous judgments, the apex Court was pleased to hold that the jurisdictions under section 115, C.P.C., are discretionary in nature, but it does not imply that it is Not a right and only privilege, therefore, the Court may not arbitrarily refuse to exercise its discretionary powers, rather, to act according to law and the principles enunciated by the superior Courts. The legislature in their wisdom have couched section 115, C.P.C., in the following language:-

> **"S.115. Revision**:---(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears...
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> (a) to have exercised a jurisdiction not vested in it by law, or
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> (b) to have failed to exercise a jurisdiction so vested, or
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> (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,"
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> the High Court may make such order in the case as it thinks fit.
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> [Provided that, where a person makes an application under sub-section he shall, in support of such application, furnish copies of the pleading, documents and order of the subordinate Court. and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court.]

11. From the bare reading of the above section, it is manifest that on entertaining a revision petition, the High Court exercises its supervisory jurisdiction to satisfy itself as to whether the jurisdiction by the courts below has been exercised properly and whether the proceedings of the subordinate Court do suffer or not from any illegality or irregularity. Reference may be placed in the case of *Muhammad Sadiq v. Mst. Bashiran and 9 others* ***(PLD 2000 SC 820).***

12. The provisions of section 115, C.P.C. envisage interference by the High Court only on account of jurisdiction alone, i.e. if a court subordinate to the High Court has exercised a jurisdiction not vested in it, or has irregularly exercised a jurisdiction vested in it or has not exercised such jurisdiction so vested in it. It is settled law that when a court has jurisdiction to decide a question it has jurisdiction to decide it rightly or wrongly both in fact and law. The mere fact that its decision is erroneous in law does not amount to illegal or irregular exercise of jurisdiction. For an applicant to succeed under section 115, C.P.C., he has to show that there is some material defect or procedure or disregard of some rule of law in the manner of reaching that wrong decision. In other words, there must be some distinction between jurisdiction to try and determine a matter and erroneous action of a court in exercise of such jurisdiction. It is a settled principle of law that erroneous conclusions of law or fact can be corrected in appeals and not by way of a revision which primarily deals with the question of jurisdiction of a

Court i.e. whether a court has exercised a jurisdiction not vested in it or has not exercised a jurisdiction vested in it or has exercised a jurisdiction vested in it illegally or with material irregularity.

13. In the case of *AASA v. Ibrahim (***2000 CLC 500)**, learned single Judge of the Quetta High Court held that, "If no error of law or defect in procedure had been committed in coming to a finding of fact, the High Court cannot substitute such finding merely because a different finding could be given**.**

14. The upshot of the above discussion is that no illegality, irregularity or jurisdictional error, in the findings of the learned lower appellate courts, which resulted into the impugned judgment and decree, could have been pointed out by learned counsel for the applicant. Resultantly, the revision petition in hand, being devoid of any force and merit, is liable to be dismissed.

Foregoing are the reasons for my short order dated 07.10.2019, whereby this Civil Revision was dismissed.

JUDGE