

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No.52 of 2018

Date _____ Order with signature of Judge _____

Present: Mr. Justice Nazar Akbar

Applicant : Jawaid Masaud Ahmed Khan
Al-Yaqeen Education Systems
(Elementary School)
Through Mr. Naveed Ahmed Khan, advocate.

Versus

Respondent : Mst. Talat Syeda.
Through Mr. Hamid Idrees, Advocate.

Date of hearing : **15.01.2020**

Date of decision : **24.01.2020**

JUDGMENT

NAZAR AKBAR, J:- This Revision Application is directed against the Judgment dated **14.03.2018** passed by the VIII-Additional District Judge, East Karachi in Civil Appeal No.200/2017 filed by the applicant, whereby the judgment dated **18.07.2017** passed by VII-Senior Civil Judge, East Karachi the decree of trial Court has been substituted with a decree of Rs.35,00,000/- as damages in the suit filed by the Respondent.

2. To be very precise, the facts of the case are that the Respondent on termination of her service has filed civil suit against the appellant stating therein that she has joined Al-Yaqeen Education System (the applicant) as a Senior Assistant Directress with effect from **02.08.2007** as per terms and conditions in appointment letter dated **09.08.2007**. It was further averred that due to financial crisis, Al-Yaqeen Education System was handed over to the applicant by

previous administration along with all fixtures, fittings and staff. She further averred that all of a sudden her services were terminated by the applicant without any hearing or show-cause notice vide termination letter dated **25.06.2012**. In response to her termination letter she wrote a letter to the applicant for her reinstatement but the same was replied in negative. Then she served a legal notice upon the applicant which was replied in negative. Therefore, the Respondent had filed the said suit for recoveries of salaries, dues and damages before the trial Court. The Respondent while seeking declaration that her termination was illegal she claimed 74 months' salaries, two months unpaid salary, and damages and liquidated damages in aggregate amounting to **Rs.49,96,000/-**, on the ground that had she not been illegally terminated, she would have worked upto 64 years of her age of retirement from the applicant.

3. The Respondent, after service of notice, filed written statement wherein the contents of the plaint were denied. The Respondent averred that she was purely a contractual employee and she was terminated on misconduct for which she was issued show cause notice but she failed to reply the same, therefore, she was terminated from service.

4. The trial Court from pleadings of the parties has framed as many as seven issues and after recording evidence and hearing the parties, partly decreed and partly dismissed the suit of the Respondent by judgment dated **18.07.2017**. The trial Court held that the Respondent is entitled to recover salaries of future 74 months and 02 months unpaid salaries, however, her claim of damages was dismissed. In an appeal filed by the applicant/defendant against the said judgment, the appellate Court by judgment dated **14.03.2018**

set aside the award of 74 months future salaries to the age of 64 years for the unperformed service and upheld payment of unpaid 02 months salaries for May and June, 2012. The appellate Court also set aside finding of trial Court on the issue of damages for mental torture and awarded an amount of **Rs.35,00,000/-** as damages claimed by her. The applicant has preferred instant Revision Application against the appellate judgment only to the extent of ground of damages.

5. I have heard learned counsel for the parties and perused the record.

6. Learned counsel for the applicant has contended that applicant is aggrieved by the judgment of appellate Court only to the extent of award of **Rs.35,00,000/-** as damages for mental torture to the Respondent, who has served with the applicant for hardly 5 years from 2007 to 2012 and at the time of her removal from the service her salary was only **Rs.17,000/-** per month. He has stated at the bar that two months' salary for unpaid period during her service has already been paid by the applicant. His contention was that neither the Respondent has led any evidence to justify damages of general nature amounting to Rs.35,00,000/- nor the Appellate Court has given any cogent reason for payment of damages on the ground of mental torture to the Respondent. He further contended that the trial Court has specifically denied the claim of damages on the ground that no evidence was produced by the Respondent to justify the same. The Respondent has not even preferred any appeal against the denial of her claim of damages.

7. It may be noted here that through the impugned order the findings of trial Court whereby that Respondent's claim of recovery of future 74 months' salary has been set aside by the Appellate Court

but the Respondent has not challenged the said finding of the appellate Court against her. In the facts and circumstances, the only question before this Court in Revision is whether the Appellate Court's findings of damages to the extent of Rs.35,00,000/- for mental torture to the Respondent was in accordance with law, evidence / or not. The learned counsel for the Respondent in response to the query from the Court that when Respondent has not preferred an appeal against the denial of her claim of damages, how it is possible to reverse such findings of the trial Court. He contended that once an appeal has been filed by anybody the entire judgment comes before the Appellate Court and the Appellate Court has ample power to pass any order even in favour of the party who has not filed any appeal or cross-objection. The 2nd question put to the learned counsel was that the decree of Appellate Court for an amount of Rs.35,00,000/- was without payment of Court fee payable on appeal. The Appellate Court has not even asked the Respondent to pay the Court fee. He replied that Court fee has already been paid by the Respondent in the trial Court alongwith plaint. In support of his contention that Appellate Court can pass order including the claim denied by trial Court but not challenged before the appellate Court by the aggrieved party. He has relied on the case of ***Province of Punjab through Collector Bahawalpur, District, Bahawalpur and others ..Vs.. Col. Abdul Majeed and others*** (1997 SCMR 1692). In this case the Hon'ble Supreme Court has discussed powers of the appellate in para-8 on which counsel for the respondent has relied. It is reproduced below:-

8. From the preceding discussion, it follows that the power conferred on **the Appellate Court under Order 41, rule 33, C.P.C. is of the widest amplitude and in exercise of this power the Appellate Court is competent to grant relief to a party, notwithstanding the fact that such party failed to prefer an appeal**

or submit any cross objection. However, in granting relief in such cases the appellate Court will be guided by principles of equity, justice and good conscience and the fact that withholding of relief would result in a contradictory, unworkable or impossible order/decreed. Therefore, **when the Appellate Court reaches a conclusion in a case that by withholding the relief to a non-appealing respondent or to a respondent who omitted to file cross-objection grave hardship or injustice is likely to result to it or that the judgment or orders will be rendered contradictory, it will be a good ground for exercise of power under Order 41, Rule 33, C.P.C. to grant appropriate relief to a non-appealing respondent or to a respondent who omitted to file cross-objection in the appeal.** In the case before us, the learned Judges of the High Court having reached the conclusion that the price of land acquired should have been assessed at Rs.4,666 per Marla, were of the opinion that in the circumstances of the case it would be unfair if the benefit of such assessment of market value of the land is not extended to those land owners also who failed to file the appeals or cross-objections. Although it was not so expressly stated in the impugned judgment by the learned Judges but from the trend of reasoning, it is clear to us that the learned Judges were of the view that it would lead to contradiction in terms, if some of the landowners in the same vicinity are awarded compensation at higher rate while others are paid at a much lower rate of assessment. **The learned Judges, therefore, took the view that the case was fit for exercise of power by them under Order 41, Rule 33, C.P.C. by awarding compensation at a uniform rate even to those respondents who had either omitted, to file the appeals against the judgment of referee Court or had failed to prefer cross-objections in the appeals filed by the appellants.** The above approach by the learned Judges for exercise of their jurisdiction under Order 41, Rule 33, C.P.C. cannot be treated as unjustified or irrelevant so as to call for interference by this Court. We, therefore, find no force in the contention of the learned counsel for the appellants that the High Court had no jurisdiction to extend the benefit of higher assessment of compensation for acquired land to land owners/respondents who had failed to file appeals or cross-objections in the appeals filed by the appellants.

8. I am afraid the case law relied upon by the learned counsel is not relevant in the facts of the case of the Respondent. The case of respondent by any stretch of imagination was not a case of “grave hardship”. It was also neither the case of omission of the respondent to file an appeal or cross-objection since there was hardly any evidence to rely on as proof of damages sustained by the respondent. The cited judgment was on the question of compensation of the value of the land to the Respondent acquired by the State, who have not filed an appeal or omitted to file cross-objection. The claim of the respondent in hand is a claim of damages of mental torture and she has not produced any evidence to claim mental torture to the extent of Rs.35,00,000/- as was rightly observed by the trial Court. Learned counsel for the respondent has only relied on the powers of appellate Court to pass such order but he has not referred to any evidence for grant of such decree even by the appellate Court.

9. In view of the above, this Civil Revision is allowed and the award of damages by the Appellate Court to the Respondent is set aside as not sustainable on the facts on record.

JUDGE

Karachi
Dated:24.01.2020

SM / Ayaz Gul