

**ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
AT HYDERABAD**

R.A No.109 of 2020

Orangi Charitable Trust (OST) Vs. Abid Hussain.

1. For order on CMA No.1050/2020.
2. For order on CMA No.1051/2020.
3. For hearing of main case.

18.01.2021

Mr. Muhammad Aamir Qureshi advocate for applicant.

ARSHAD HUSSAIN KHAN, J: - The applicant through instant Revision Application has called in question the order dated 20.02.2020 passed by learned IXth Additional District Judge, Hyderabad in Civil Appeal No.64/2016 on the respondent's application U/O IX Rule 9 read with section 151 CPC, whereby aforesaid civil appeal, which was earlier dismissed for non-prosecution, was restored to its original position.

2. Brief facts leading to the filing of this revision application are that the respondent filed F.C Suit No.123/2011 for recovery of amount against applicant-Orangi Charitable Trust (O.C.T) before learned VIth Senior Civil Judge, Hyderabad. The respondent/plaintiff who by profession is a legal practitioner rendered his legal and assistance/services to the applicant/defendant an organization for providing Micro Credit Schemes with the collaboration of different local organization, for recovery of secured loan from one of its defaulting customer. In this regard, a MoU was also entered into between the respondent/plaintiff and the applicant/defendant and pursuant to the terms thereof the applicant agreed to pay 30% of principal amount and 50% of the service charges to the respondent/plaintiff towards his professional fees, within three days from the date of recovery of the amount from the defaulter. The plea of the respondent/plaintiff in the case is that pursuant to his efforts the amount was recovered from the defaulter; however, the applicant/defendant failed to pay his professional fees/charges as per the terms of the MoU. Resultantly, the respondent filed F.C. Suit No. 123 of 2011 against the applicant

for recovery of his due amount. On 29.10.2015, the said suit was dismissed under Order XVII Rule 3 CPC. The respondent preferred Civil Appeal bearing No.64 of 2016 against the said judgment and decree of the Senior Civil Judge, Hyderabad. Subsequently, the said Civil Appeal was dismissed for non-prosecution; however the said order, upon the application of the respondent/appellant, was recalled by learned IXth Additional District Judge/MCAC-I, Hyderabad, which order is impugned in the instant proceedings.

3. Learned counsel for the applicant, *inter alia*, contended that the respondent is habitual to remain absent from the courts resultantly his matter was being adjourned from time to time, however, when despite having sufficient opportunities, the respondent failed to proceed with matter, the learned ADJ dismissed the Civil Appeal for non-prosecution. Nonetheless, vide impugned order the Civil Appeal was restored to its original position, without considering the conduct of respondent. Lastly, prayed for setting aside the impugned order.

4. Heard and perused record.

5. 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.

6. While exercising revisional jurisdiction, this Court has limited scope under section 115, C.P.C. and I have no hesitation to hold that

still the fate of suit, which was dismissed under Order XVII rule 3 CPC, is to decide as to whether findings of trial Court are maintained or reversed by the lower appellate Court in the subject civil appeal. It is also well settled that law leans adjudication on merits and rules of procedure are meant to advance justice and preserve rights of litigants and they are not to be interpreted in a way as to hamper the administration of justice. Reliance in this regard can be placed on the case of Mst. Ishrat Jehan and another v. Syed Anis-ur-Rehman and another [2013 CLD 276].

7. From perusal of the impugned order, it appears that learned lower appellate court, after hearing the counsel for the parties and taking into account the material facts has passed the speaking order. Relevant portion whereof is reproduced as under:

“...The grounds taken in the instant application are appealable to the prudent mind that appellant who is also Government servant in prosecution Department may have been engaged in his official duty at the time of call. The absence of the counsel of the appellant on the ground that he was not feeling well is also a very personal ground and denial of such ground would be deemed a denial of a human being. Another aspect of the matter is that very right of the appellant are involved in the matter and in order to decide the matter once for all, one more opportunity is to be given to the appellant with a hope that in future no further adjournment will be sought nor any tactics will be taken to linger on the matter. Moreover the law submitted by the learned counsel for the appellant is very much relevant to the facts of the present case and the law relied upon by the learned counsel for the respondent is distinguishable from the facts of the present case. Therefore, instant application is allowed and the order dated 15.7.2017 and 19.3.2019 are hereby recalled and restore the instant appeal on its original stage.”

8. The upshot of the above is that there is no illegality or gross irregularity and infirmity in the findings recorded by learned appellate Court below; more particularly, the impugned order is not passed without jurisdiction. No force is found in the stance taken by applicant in the present proceedings as the applicant has failed to point out any error and or any illegality, infirmity or jurisdictional error in the impugned order, which could warrant interference by this Court in exercise of its revisional jurisdiction. Consequently, the revision application in hand, being devoid of any force and merit, is **dismissed** along with all listed applications.

JUDGE

Abdullah Channa/PS