

ORDER SHEET

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

First Civil Appeal No. 02 of 2010

For Katcha Peshi.

Mr. Abdul Qadir Shaikh, advocate for the appellants.

Mr. Arbab Ali Chandio, advocate for the respondents.

Date of hearing : 24.09.2012.

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Nadeem Akhtar, J.- The appellants have filed this appeal under Section 96 CPC challenging the judgment delivered on 16.02.2010 and the decree drawn on 22.02.2010 by the Senior Civil Judge, Naushehro Feroz, in F.C. Suit No.160/2003 filed by the respondents, whereby the said Suit for damages was decreed against the appellants in the sum of Rs.10,000,000.00.

2. The respondents filed the aforementioned Suit for damages against the appellants before the Senior Civil Judge Naushehro Feroz, praying for a decree against the appellants in the sum of Rs.10,000,000.00. The respondents had stated in their Suit that all of them were respectable citizens belonging to Village Banhoo Khan Tiwano, Taluka Bhiria, District Naushehro Feroz, and have been living at Tharu Shah, Taluka Bhiria, for the past three decades. They had further stated that respondent No.1 was a retired Government employee, and at the time of filing of the Suit, was the owner and Chief Patron of Waris Educational Lyceum, Tharu Shah. Respondents 3 and 4 were also Government employees. It was also stated by the respondents that all the appellants, except appellant No.10, belonged to the same Village.

3. It was the case of the respondents that appellants No.1, 4 and 6 had some grudge against respondent No.1. It was alleged by the respondents that on 25.11.1992, the appellants, along with 17 unknown persons after gathering in front of Media Centre, Tharu Shah, took out a procession. It was further alleged that appellants No.1, 4 and 6 addressed the said procession, whereafter the people present there raised defamatory slogans against the respondents. It was also alleged by the respondents that the appellants got false and defamatory news published against the respondents in the Sindhi daily 'Sindh' on 27.11.2002. Respondent No.3 filed a direct complaint against the appellants for forming unlawful assembly, which was dismissed. The respondents had further alleged that on 09.09.2003, appellants No.1,2,3,5,12 and 13 made a false and defamatory complaint to the DPO Naushehro Feroz. On such complaint, the concerned SHO conducted an inquiry and found that the allegations were baseless. On the basis of the above allegations, the case of the respondents was that their reputation, as well as the reputation of respondent No.1's

institute, had been lowered before the general public and educational institutions because of the defamatory acts committed by the appellants.

4. The applicants contested the suit by filing the written statement. Thereafter, issues were framed by the Senior Civil Judge and the parties led their respective evidence. By the impugned judgment and decree, the Suit was decreed against the appellants by the Senior Civil Judge as prayed by the respondents, that is, in the sum of Rs.10,000,000.00.

5. Mr. Abdul Qadir Shaikh, the learned counsel for the appellants, submitted that the Suit filed by the respondents was barred under Section 13 of the Defamation Ordinance, 2002, (**the Ordinance**). He further submitted that, since the entire claim of the respondents was based on the defamation allegedly caused by the appellants, only the District Court had the jurisdiction to try the respondents' Suit under the Section 13 of the Ordinance. He argued that the Senior Civil Judge had no jurisdiction in respect of the matter, and that the entire proceedings before him were *coram non judice*. The learned counsel for the appellants contended that the impugned judgment and decree are liable to be set aside on this ground alone without looking into the merits of the case.

6. On the other hand, Mr. Arbab Ali Chandio, the learned counsel for the respondents vehemently opposed this appeal. He submitted that, if the above contention of the appellants is accepted, then the appeal should have been filed by the appellants before the District Judge and not before this Court, as the appeal against the judgment and decree passed by the Senior Civil Judge lies before the District Judge. He further submitted that if the Senior Civil Judge did not have the jurisdiction in the matter, even then the appeal should have been filed before the District Judge. The learned counsel contended that this Court has no jurisdiction to entertain this appeal in view of the above. He submitted that without prejudice to his above submissions, the Suit was not barred, but was maintainable before the Senior Civil Judge in view of his pecuniary jurisdiction.

7. In his rebuttal, Mr. Abdul Qadir Shaikh, the learned counsel for the appellants, submitted that the Ordinance is a special law which provides special remedy before a special forum. He further submitted that, being the special law, the provisions contained in the Ordinance shall override the provisions of the general law, and the jurisdiction conferred to other courts under the general law shall be barred by virtue of the special law.

8. I would like to refer here to two reported cases of this Court on the point of exclusive jurisdiction of the District Court in the cases pertaining to defamation under the Ordinance. In the case of *Pakistan Herald Publications (Pvt.) Ltd. and 2 others V/S Karachi Building Control Authority through Controller of Buildings 2012 CLD 453*, a learned Division Bench of this Court was pleased to hold that the Defamation Ordinance, 2002, on its reading shows that it is a special law made by the Federal Government on the subject of defamation creating special remedies and also provides for specific court for trial of cases and appeal. It has conferred jurisdiction for trial of cases under the Ordinance to the District Court. It was further held that the Ordinance has provided District Court as the court of trial of cases under it ; it will be the District Court and no other court including the High Court ; it is the appeal against the final decision and decree of that court which

will be heard by the High Court. Similarly, in the case of A. Khalid Ansari V/S Mir Shakil ur Rehman, 2011 CLD 1196, it was held by a learned single judge of this Court that Section 13 of the Ordinance has created an exception to the rule contained in Section 15 CPC to the effect that now suits in respect of defamation shall be instituted in the District Court.

9. In support of his submission regarding the overriding effect of the special law over the general law, the learned counsel for the appellants relied upon the case of Industrial Development Bank of Pakistan V/S Allied Bank of Pakistan and another, PLD 1986 Supreme Court 74, wherein the learned larger Bench of the Hon'ble Supreme Court was pleased to hold that it is well-settled that the law governing procedure generally in respect of a court upon which such special jurisdiction is conferred, is displaced by the special procedure provided by the special enactment conferring a new jurisdiction, and that the ordinary rule of construction is that where the legislature has passed a new statute giving a new remedy, that remedy is the only one which can be pursued.

10. In addition to the above authority cited by the learned counsel for the appellants, I would like to refer to one more authority of the Hon'ble Supreme Court and one reported Division Bench case of this Court. In the case of Attaullah Khan and others V/S Samiullah and others, 2007 SCMR 298, it was held by the Hon'ble Supreme Court that it is a settled law that special law excludes the general law. In the case of Shahid Maqbool V/S Mst. Ayesha Saleem Khan and 24 others, 2009 CLC 1452, it was held by the learned Division Bench of this Court that it is a settled principle of law that where a special tribunal / court is constituted to hear and decide dispute which come under the relevant statutes, then all other courts shall stand debarred from exercising the powers of the same nature.

11. Section 13 of the Ordinance provides that the District Court shall have the jurisdiction to try the cases under the Ordinance. The language used in Section 13 is absolutely clear and unambiguous, and the word "shall" used therein is of great significance. The Preamble of the Ordinance reads as "*An Ordinance to make provisions in respect of defamation. Whereas it is expedient to make provisions in respect of defamation and for matters connected therewith or incidental thereto*". In the case of Fazal Dad V/S Col. (Rtd.) Ghulam Muhammad Malik and others, PLD 2007 SC 571, the Hon'ble Supreme Court was pleased to hold that "*it is a settled law that preamble is always key to interpret the statute*". In view of the unambiguous language of Section 13 of the Ordinance read with its Preamble, as well as the law laid down by the Hon'ble Supreme Court in the aforementioned case of Fazal Dad regarding the importance of the Preamble for interpreting the statute, it is abundantly clear that all cases in respect of defamation and / or the matters connected therewith or incidental thereto can be tried under the Ordinance only by the District Court, and no other court, including the High Court, shall have the jurisdiction in respect thereof. The view expressed by me is supported also by the cases of Pakistan Herald Publications (Pvt.) Ltd. (supra) and A. Khalid Ansari (supra) decided by this Court.

12. In view of my above finding, the contention of the learned counsel for the appellants that the Suit for defamation ought to have been filed by the respondents before

the District Judge and not before the Senior Civil Judge, appears to be correct. Resultantly, the Senior Civil Judge had no jurisdiction to adjudicate upon the Suit, and the contention of the learned counsel for the appellants in this behalf is also correct. Therefore, the entire proceedings before the Senior Civil Judge, being *coram non judice*, were void *ab initio*. As the impugned judgment and decree are void having no legal effect, the same cannot be allowed to remain in the field. In this context, I would like to refer to the following three reported cases of the Division Bench this Court :

13. In the case of *Shabbir Jan Sarhandi V/S Province of Sindh through Chief Secretary and 3 others*, 2006 PLC (C.S.) 955 (Karachi), the learned Division Bench of this Court was pleased to hold that since every order passed without jurisdiction is always void *ab initio* and nullity in law, therefore, this Court shall always have jurisdiction to consider such point. In another case ; namely, *Mst. Mubarak Salman and others V/S The State*, *PLD 2006 Karachi 678*, it was held by the learned Division Bench of this Court *inter alia* that once it has been found that Presiding Officers of the courts have abused the process of the court and the judgments passed by them are void *ab initio*, then it is incumbent upon the Superior Courts, and it is one of the duties of the Superior Courts, to correct such wrongs of the subordinate courts by exercising whichever powers available with them either inherent, supervisory, revisional or constitutional powers, either on the application of any party or under its *suo motu* jurisdiction. The reason being that it was the act of the court done in the abuse of process of court, that is to be corrected by the court itself or by the Superior Court as soon as it is brought to its notice through any source. Except for the superior Courts, there is no other authority which can correct such act of the subordinate courts. In the case of *Muhamamd Ayaz alias Cheena and others V/S The State*, *PLD 2004 Karachi 652*, the learned Division Bench of this Court was pleased to hold that there can be no cavil to the proposition that an order / judgment without jurisdiction is void and nullity in law, and that an order / judgment without jurisdiction being void *ab initio* cannot be clothed with legality merely because it has been upheld in appeal or revision by inadvertence.

14. It is, therefore, concluded that the impugned judgment and decree, being void *ab initio*, cannot be allowed to remain in field. The objection raised by the learned counsel for the respondents that this Court has no jurisdiction to decide this appeal as the appeal should have been filed by the appellants before the District Judge, has no force in view of the cases discussed above. It is a settled law that this Court has inherent and constitutional powers to remedy / correct the wrongs committed by subordinate courts by passing judgments / orders which are void or without jurisdiction. It is also a settled law that this Court in its inherent jurisdiction can convert an Appeal, Constitutional Petition or Revision to any other remedy, as held by the learned Division Bench of this Court in the case of *Syed Ghazanfar Hussain through Legal Heirs and others V/S Nooruddin and others*, *2011 CLC 1303*. In the present case, since the entire proceedings before the Senior Civil Judge were *coram non judice*, the appellants did not have the remedy for filing the appeal before the District Judge, as in the case of defamation filed under the Ordinance, the appeal lies before the High Court. Even otherwise, this Court has inherent powers to exercise its

extraordinary constitutional jurisdiction in case of orders or judgments which are void *ab initio*.

15. As a result of above discussion, this appeal is converted into a Constitutional Petition, which is allowed and the impugned judgment and decree are hereby declared as *coram non judice* and void *ab initio*.

J U D G E