

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Before:
Mr. Justice Ahmed Ali M. Shaikh, CJ
Mr. Justice Yousuf Ali Sayeed

CP No.D-5507 of 2021

1. For orders on office objection No.18
2. For orders on Misc. No.23497 (exemption)
3. For orders on Misc. No.23498/2020 (stay)
4. For hearing of main case.

21.09.2021

Mr. S.Ali Ahmed Tariq, Advocate for the petitioner.

AHMED ALI M. SHAIKH, CJ.- Petitioner has assailed the order dated 07.10.2020 passed by the learned XII Additional District and Sessions Judge/Model Civil Appellate Court, District South, Karachi, in Civil Revision Application No.71 of 2019, whereby he dismissed the petitioner's Revision Application against the order dated 01.04.2019 passed by the learned V Senior Civil Judge, District South, Karachi in Execution Application No.09 of 2013 whereby the applications under Section 47 CPC and order XXI Rule 29 CPC, 1908, (the "**Underlying Applications**") filed by the petitioner had been dismissed.

2. Facts on record are not in dispute. It appears that the Respondent No.1 has filed a Suit for specific performance, declaration and recovery against the petitioner before this Court, which on account of change in pecuniary jurisdiction was transferred to the learned District Judge, Karachi South, marked to the Vth Senior Civil Judge, Karachi South and assigned No.103 of 2002. The petitioner filed written statement but did not maintain due representation thereafter so as to properly contest the matter. Accordingly, the trial Court passed Judgment and Decree dated 25.2.2020 and 26.2.2020 respectively. The Respondent No.1 then filed Execution Application wherein the petitioner filed an application under Section 12(2) CPC which was dismissed for non-prosecution vide order dated 13.11.2015. However, the petitioner did not file any application seeking restoration thereof or for recalling of the said order. However, the petitioner in February, 2017, filed the Underlying Applications seeking to explain his own indolence and agitate that the Judgment and Decree has been wrongly passed, hence, the execution proceedings may

be stopped pending decision of the point raised in the application. However, the Underlying Applications were heard and rejected vide order dated 01.04.2019. Against said order of the Executing Court, the petitioner preferred the Civil Revision which too met the same fate, vide the order impugned herein. Nonetheless, on our query as to what point could validly arise for consideration in the Constitutional Jurisdiction under Article 199 he submitted that the trial Court lacked territorial jurisdiction in the matter, hence, it was a nullity in the eyes of law. In support of his contentions he placed reliance on the case of Muhammad Ali versus Ghulam Sarwar (1989 SCMR 640) and the case of Allah Ditta versus Ahmed Ali Shah (2003 SCMR 1202).

3. We have considered the contentions advanced by the learned counsel for the petitioner, the written statement filed by the petitioner and the orders passed by the Courts below. It is an admitted position and even not controverted during course of arguments by the learned counsel for the petitioner that the petitioner did not ever raise objections as to the jurisdiction of the trial Court. It is worthwhile to mention here that the petitioner had filed written statement and half-heartedly contested the proceedings. With profound respect the case law cited by the learned counsel is quite distinguishable on facts and circumstances of the instant case. There is yet another aspect of the case that against the impugned Judgment and Decree the petitioner preferred not to file any Appeal rather filed an Application under Section 12(2) CPC which was dismissed for the non-prosecution and no application for its resurrection was filed either. However, the sole point agitated in the matter before us was that the trial Court had lacked territorial jurisdiction, hence, the Judgment and Decree was nothing but nullity. Since the petitioner has himself submitted to the jurisdiction of the trial Court and did not raise any objection at the relevant point of time no objection as to the place of suing can be raised either at the Appellate or Revisional stages. For the sake of ready reference, Section 21 is reproduced hereunder:-

“21. Objections to jurisdiction.- No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been a consequent failure of justice.”

4. A bare perusal of the provisions of above Section reflects that if the objection as to the territorial jurisdiction is not raised before the Court of first instance the same cannot be taken before the superior forums. The Honourable Supreme Court of Pakistan in the case of Regional Development Finance Corporation versus Gul Hassan (2009 SCMR 706), while dealing with above proposition observed that:-

“5. The objection in the instant case is with regard to the territorial jurisdiction of the Court. Under section 21, C.P.C. no such objection qua territorial jurisdiction can be allowed to be taken before the appellate or revisional Court unless such objection is taken in the Court of first instance i.e. the trial Court. The application for leave to defend would clearly indicate that no such objection about territorial jurisdiction was ever taken by the defendant at the earliest possible opportunity. Such draw back was pointed out by Mr. Fasi-ul-Mulk learned counsel for the Corporation before the High Court but the stance taken with reference to section 21, C.P.C. was repelled. We hold that it was wrongly repelled and the provisions of section 21, C.P.C. could not be so conveniently avoided.”

In view of foregoing, instant petition being bereft of merits is dismissed in limine alongwith pending applications.

Chief Justice

Judge