

IN THE HIGH COURT OF SINDH AT HYDERABAD

Revision Application 213 of 2017 : Abdul Majeed V. Abdul Samad & Others
For the applicant : Mr. Muhammad Hassan Chang, Advocate.
Date/s of hearing : 11.12.2023.
Date of announcement : 11.12.2023.

ORDER

Agha Faisal, J. The applicant had filed F.C.Suit 79 of 2014 before Senior Civil Judge Tando Allahyar and same was *dismissed as withdrawn with no order as to costs* vide order dated 24.4.2014.

Applicant then filed F.C.Suit 203/2016, stated to be identical to the previous one, before Senior Civil Judge Tando Allahyar and same was dismissed vide judgment dated 13.02.2017 on the premise that earlier the identical suit has already been dismissed, hence no case was made out to entertain same matter again. Civil Appeal 26 of 2017 was also dismissed by Additional District Judge Tando Allahyar vide judgment dated 15.8.2017; upholding the order of the trial Court.

The only contention of the applicant is that in the original suit, being F.C.Suit 79 of 2014, the applicant had sought for the same to be dismissed with permission to file a fresh, however, the permission was missing from the dismissal order. *Admittedly* such permission was never granted.

The dismissal order of F.C.Suit 79 of 2014 is available at page 83 of the Court file and *prima facie* it makes no mention if any permission having been granted to file the suit again. It is also admitted that said dismissal order was never assailed by the applicant either in review or in appeal. In such circumstances no case is made out to entertain the applicant's plea.

It is observed that the respective courts appear to have exercised their jurisdiction and no infirmity in such regard is manifest. It is trite law¹ that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the orders impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forum.

Notwithstanding the foregoing, learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that either impugned order is either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity.

In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed along with listed applications.

Judge

¹ Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.