

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
R.A No.175 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For hearing of main case.

04-10-2023

None present for the Applicant.

ORDER

ARSHAD HUSSAIN KHAN, J.- Through instant revision application under Section 115 CPC, the applicant has assailed the judgment and decree dated 19.05.2021 passed by the learned VIIIth Additional District Judge, Hyderabad in Civil Appeal No.173 of 2018 (Re: Batool and others v. Jabbar Ahmed), whereby the judgment and decree dated 29.09.2018 passed by the learned IVth Senior Civil Judge, Hyderabad in F.C Suit No.97 of 2013 (Re: Jabbar Ahmed v. Mst. Batool and others) was maintained with some modification.

2. From the record it appears that this civil revision application was presented in the office on 17.11.2021 and lastly it was fixed on 02.12.2021; however, since then neither the applicant nor her Counsel turned up to pursue this revision application, as such, I have gone through the record made available before me.

3. Briefly the facts giving rise to the present revision application are that respondent / plaintiff Jabbar Ahmed filed F.C. Suit No.97 of 2013 for specific performance of the contract on the basis of sale agreement. Upon notice of the case present applicant contested the proceedings. Learned trial Court on the basis of divergent pleadings framed the issues and recorded the evidence of the parties and after hearing the learned Counsel for the parties decreed the suit partly in favour of the plaintiff / respondent to the effect that defendant is liable to pay sale consideration amount of Rs.300,000/-through her legal heirs at the rate of 5% per markup per annum vide judgment and decree dated 29.09.2018. Being

aggrieved of said judgment and decree, both the parties preferred appeals i.e. Civil Appeal No.171 of 2018 and Civil Appeal No.173 of 2018 respectively before the lower Appellate Court, which were subsequently consolidated. The lower Appellate Court while considering the record dismissed both the appeals and maintained the judgment and decree passed by the learned trial Court; however, with some modification that applicant / respondent is liable only to pay Rs.200,000/- to the appellant / plaintiff Jabbar Ahmed with markup of 5% per annum for the reasons as mentioned in Para Nos.09 & 10 of the impugned judgment, which reads as under:-

“09. Furthermore the learned trial court partly decreed the suit of appellant / plaintiff to the extent of return of paid sale consideration amount of Rs.300,000/- by the defendant Mst. Batool through her legal heirs at the rate 5% percent markup per annum. The perusal of evidence of both parties and other material available on record it reveals that the main contention of appellant Jabbar Ahmed is that he paid Rs.200,000/- (Rupees two lac) as earnest money through pay order and then paid Rs.50,000/- in cash and Rs.50,000/- through cheque. As amount of pay order is concern the defendant Mst. Batool in her written statement admitted in Para No.09 while denied regarding sale agreement and clearly stated tht sale agreement is fake. Defendant Mst. Batool in her written statement denied regarding receiving of cash amount of Rs.50,000/- and cheque of Rs.50,000/-. The plaintiff / appellant Jabbar Ahmed in his pleadings as well as in evidence stated that after payment of pay order he paid Rs.50,000/- cash and cheque of Rs.50,000/- but he failed to disclose that in whose presence he paid amount of Rs.50,000/- to defendant Mst. Batool and regarding cheque of Rs.50,000/- also failed to produce any proof that whether such cheque was encashed in favour of defendant Mst. Batool or not.

10. Looking to the above discussion and material available on record, the learned trial court already discarded the sale agreement Ex-47/1 and only passed decree to the extent of Rs.300,000/- with direction to the defendant's legal heirs to pay Rs.300,000/- to the plaintiff with markup 5% per annum. As amount of pay order Rs.200,000/- stands admitted by the defendant in written statement and denied the remaining payment of cash of Rs.50,000/- and cheque of Rs.50,000/-. The plaintiff / appellant failed to produce any proof regarding payment of cash of Rs.50,000/- and regarding cheque of Rs.50,000/-, therefore I am of the view that the

plaintiff / appellant failed to prove regarding payment of cash Rs.50,000/- and cheque of Rs.50,000/-, therefore, regarding that amount defendant cannot be directed to pay the same. As case laws produced by advocate for appellants of both appeals mentioned above which perused and same are not relevant with the facts of these appeals and are quite different from the facts of present appeals, hence the point No.1 is decided in negative.”

4. The applicant while challenging the above order has now attempted to reopen the case through this revision application under Section 115 CPC, inter alia, on the ground that the impugned judgments and decrees passed by the Courts below are illegal, void and liable to be set aside; that the learned trial Court while passing the impugned judgment has failed to consider that while decreeing the suit the defence plea could not be appreciated and considered and this fact has also been overlooked by the lower Appellate Court; that the trial Court has committed illegality while decreeing the suit; whereas, the lower Appellate Court has summarily dismissed the appeal with some modification filed by the present applicant without considering or appreciating the record.

5. This is a revision application under Section 115 CPC. The provision of Section 115 CPC 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 the Court has jurisdiction to decide a question it has jurisdiction to decide it rightly or wrongly both in fact and law. Mere fact that its decision is erroneous in law does not amount to illegal or irregular exercise of jurisdiction. For the applicant to succeed under Section 115 CPC, she has to show that there is some material defect in 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 the matter and erroneous action of a Court in exercise of such jurisdiction. It is also settled principle of law that erroneous conclusion of law or fact can be

corrected in appeal and not by way of revision, which primarily deals with the question of jurisdiction of a Court i.e. whether a Court has exercised the jurisdiction not vested in it or has not exercised the jurisdiction vested in it or has exercised the jurisdiction vested in it illegally or material irregularity.

6. No any illegality or infirmity has been mentioned in the application which could warrant interference in the impugned decisions by this Court. It is well settled that if no error of law or defect in procedure had been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also settled law that concurrent findings of the two Courts below are not to be interfered in revisional jurisdiction, unless extraordinary circumstances are demonstrated by the applicant. It is also trite law that a revisional Court does not sit in reappraisal of evidence and it distinguishable from the Court of appellate jurisdiction.

7. The upshot of the above discussion is that there appears no illegality, irregularity or jurisdictional error in the findings of the Courts below which could warrant interference of this Court. Hence, this Revision Application is found to be meritless and is accordingly dismissed alongwith pending application(s), if any.

JUDGE

Shahid