

IN THE HIGH COURT OF SINDH AT KARACHI

CP NO. D-5509 of 2023

( *Muhammad Ashraf Raja v. Noreen Naz & Others* )

**Present:**

Muhammad Shafi Siddiqui &  
Sana Akram Minhas JJ

**Petitioner:** Muhammad Ashraf Raja  
In Person

**Date of Hearing:** 22-5-2024

**Date of Decision:** 22-5-2024

**ORDER**

1. **Sana Akram Minhas, J:** The Petitioner, an Advocate representing himself, has challenged an order passed by the Additional District Judge, Karachi (South) dated 17.8.2023 (“**Impugned Order**”), which dismissed his Civil Revision Application No.2/2023 (“**Revision Application**”) and upheld the Trial Court’s order dated 5.11.2022. The latter order dismissed the Petitioner’s second application under Order 7 rule 11 CPC (“**Underlying Application**”) with costs of Rs.25,000/-, which was filed in Respondent No.1’s First Class Civil Suit No.336/2017 (*Noureen Naz v. Muhammad Ashraf Raja*) (“**Underlying Suit 336**”). The Respondent No.1 also happens to be an Advocate.
2. The parties (i.e. Petitioner and Respondent No.1) have a tumultuous history of litigation. The record reflects the following cases:
  - i) First Class Suit No. NIL/2010 (*Muhammad Ashraf Raja Advocate v. Noreen*): This suit for the restitution of conjugal rights was instituted by the Petitioner against Respondent No.1. The Petitioner alleged that he and Respondent No.1 had married, and the Petitioner had paid the dower amount of Rs.50,000/-, half in cash and half by cheque. The Trial Court, suo motu, rejected the Petitioner’s plaint by order dated 10.11.2010 (**at Court File Pg.41, Annex P-3**). The Petitioner then filed Family Appeal No.101/2010 against the order of 10.11.2010, which was dismissed on 14.3.2011. Against the concurrent findings, the Petitioner filed CP No.S-505/2011 in the High Court which was also dismissed sometime in 2014.
  - ii) Summary Suit No.35/2013 (*Muhammad Ashraf Raja v. Nooreen Naz*) (**at Court File Pg.47, Annex P-7**): The Petitioner next filed this

summary suit, alleging that he had extended a “family/friendly loan” to the Respondent No.1 over a period of time. Notably, the Petitioner in this suit did not mention anything about him and the Respondent No.1 being married. Instead, the Petitioner claimed that the Respondent No.1 issued a cheque of Rs.25,000/- to him, which was dishonoured, prompting him to file the summary suit. This Suit was decreed on 2.10.2010 and decree was drawn on 4.10.2010 **(at Court File Pg.59 & 67, Annex P-8 & P-9)**. The Petitioner subsequently filed Execution Application No.1/2016 for execution of the aforesaid money decree, which was allowed by order dated 19.4.2018 **(at Court File Pg.69, Annex P-10)**.

- iii) Underlying Suit 336 dated 23.3.2017 viz. Civil Suit No.336/2017 (Noureen Naz v. Muhammad Ashraf Raja) (at Court File Pg.73, Annex P-11): This suit for malicious prosecution and damages was instituted by the Respondent No.1 against the Petitioner, wherein she, inter alia, denied marrying the Petitioner. She further claimed that the Petitioner’s unending litigations and false allegations not only affected her health and her professional life, which she was forced to discontinue, but also disrupted her matrimonial life. It was in this Underlying Suit that the Petitioner filed the Underlying Application (under Order 7 rule 11 CPC) on 13.11.2021 **(at Court File Pg.115, Annex P-13)** seeking rejection of the plaint, which was dismissed by the Trial Court by order dated 5.11.2022 **(at Court File Pg.127, Annex P-16)**.
- iv) Revision Application dated 24.12.2022 viz. Civil Revision No.2/2023 (M. Ashraf Raja v. Noureen Naz) (at Court File Pg.145, Annex P-17): The Petitioner preferred the Revision Application **(at Court File Pg.145, Annex P-17)** challenging the Trial Court’s order of 5.11.2022. This Revision Application was dismissed through the Impugned Order.

3. Before us, the Petitioner in his Petition has reiterated the grounds taken by him in his affidavit to the Underlying Application and in his Revision Application, viz.
- (a) The Underlying Suit was time barred under sections 8 and 12 of the *Defamation Ordinance 2002 (“DO 2002”)*;
- (b) Under section 13 of DO 2002, exclusive jurisdiction vests in the District Court for trial of defamation cases;

- (c) Legal communication of the Petitioner in court does not constitute defamation; hence no cause of action has accrued to the Respondent No.1 to institute the Underlying Suit.
4. On 5.11.2022, the Trial Court dismissed the Underlying Application (filed on 13.11.2021), holding as follows:
- i) The Respondent No.1 had filed the Underlying Suit for damages due to malicious prosecution, and not for defamation under the provisions of DO 2002.
  - ii) Earlier on 16.2.2018, the Petitioner had filed an identical application for rejection of plaint on similar grounds which was dismissed on 28.4.2018. This order was never challenged by the Petitioner before any forum and hence, it attained finality.
  - iii) On 15.5.2018, another application was filed by the Petitioner under section 21 of the *General Clauses Act 1897* read with section 13 of DO 2002. This application was also dismissed on 12.11.2019 on the grounds that the Respondent No.1 had not invoked her remedy under the DO 2002. The Petitioner did not contest the dismissal order of this application either.
  - iv) After the settlement of issues on 23.11.2020 and filing of an affidavit-in-evidence by the Respondent No.1, the Petitioner on 17.3.2021 filed yet another application this time under Order 18 rule 4 CPC which was dismissed on 7.8.2021.
  - v) The Underlying Application (under Order 7 rule 11 CPC) was merely a repetition of the contents of the earlier application under Order 7 rule 11 CPC and the application under section 21 of the *General Clauses Act 1897* read with section 13 of DO 2002, both of which had already been dismissed.
  - vi) In addition to the aforesaid three applications, the Petitioner had also filed two Civil Transfer applications, with the first one being allowed and the second one being rejected.
  - vii) The Respondent No.1's Underlying Suit was filed within the prescribed time limit. The Petitioner's Family Suit No. NIL/2010 reached a conclusive end when the Supreme Court dismissed Petitioner's Constitution Petition No. 226-K/2014 via an order dated 5.8.2014. Subsequently, the Respondent No.1 filed the Underlying Suit within the six (6) year limitation period as stipulated by Article 120 of the *Limitation Act 1908*.

viii) The series of applications filed by the Petitioner including the Underlying Application were vexatiously filed with the design to unnecessarily prolong the Underlying Suit.

It was in the above circumstances that the Trial Court imposed a cost of Rs.25,000/- when dismissing the Petitioner's Underlying Application (i.e. his second application under Order 7 rule 11 CPC).

5. The learned Additional District Judge, Karachi (South), in the Impugned Order, has closely examined the Trial Court's reasoning. It observes that in the present context, the issue of limitation involved a mixed question of fact and law which required evidence of the parties. Additionally, the Impugned Order directs that the Underlying Suit should be contested on its merits and the question of its maintainability is to be decided by the Trial Court after recording evidence. We find this unexceptionable.
6. While a trial court is primarily responsible for assessing facts, the High Court possesses the authority under Article 199 of the *Constitution of Pakistan, 1973* to intervene in a limited scope. This encompasses rectifying jurisdictional errors and constitutional infringements. However, such circumstances are not found to be applicable in the present case.
7. The contents and nature of the Underlying Suit are unmistakable – it seeks damages for malicious prosecution. The Petitioner's persistent denial and stubborn insistence to the contrary (which have been demonstrated through vexatious and frivolous repeated applications), will not alter this reality. Given the above, the Impugned Order dated 17.8.2023 warrants no intervention. The instant Constitution Petition No.D-5509/2023 holds no merit and, hence, is hereby **dismissed**, along with all pending applications, with costs of Rs.35,000/-. These are to be deposited by the Petitioner within fourteen (14) days with the Sindh High Court Clinic.

**JUDGE**

Karachi  
Dated: 22<sup>nd</sup> May, 2024

**JUDGE**