

Judgment Sheet

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Civil Revision Application No. S-02 of 2015

Applicant : Imdad Hussain s/o Muhammad Arif, Brohi
Through Mr. Abdul Rehman A. Bhutto, Advocate

Respondent : Muhammad Suhail s/o Late Rabnawaz, Mugheri
Through Mr. Imtiaz Ali Mugheri, Advocate

Date of hearing : **14.11.2024**
Date of Decision : **22.11.2024**

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this Civil Revision Application under Section 115 C.P.C, the applicant has impugned judgment dated 30.10.2014 and decree dated 01.11.2014, passed by learned V-Additional District Judge, Larkana ("**the appellate Court**") in Civil Appeal No.41 of 2011, whereby; the judgment and decree dated 28.5.2011, passed by learned III-Senior Civil Judge, Larkana ("**the trial Court**") in F.C Suit No.95 of 2010, through which the suit of plaintiff/Respondent was decreed has been maintained by dismissing the appeal.

2. The succinct facts precipitating the captioned Civil Revision Application are that Respondent No.1 instituted a suit for recovery of Rs.200,000/- as Damages against the applicant, wherein he asserted that he, his sister Mst.Farzana and mother Mst.Sasuee are owners of agricultural land bearing Survey No.69 admeasuring 06-14 Acres to the extent of 50-Paisa share, i.e. 03-37 Acres situated in Deh Nasarullah, Tapo Dodai Taluka and District Larkana and such record of right was mutated in their name. It is averred that the applicant had filed F.C Suit No.155/2004 for Specific Performance of Contract against the Respondent and others on the basis of false, fabricated, managed Sale Agreement dated 19.12.2003, and the Respondent contested the above suit by engaging advocates and paid them professional fees and the above suit finally was dismissed on 16.04.2008. After its dismissal, the Respondent challenged it by filing Civil Appeal No.05/2008, which was also

contested by the Respondent and his family members by engaging an advocate and paying them a professional fee. Finally, the civil appeal was dismissed. The applicant again challenged the decision of the appellate Court before this Court by filing Civil Revision No.29/2009, which was too dismissed. The Respondent has claimed that due to the above false litigation, he and his family sustained financial and mental loss; hence, he filed suit.

3. The applicant contested the suit and filed his written statement, in which he denied the claim of the Respondent and asserted that he had rightly filed the suit as the agreement was executed between them. However, the suit was dismissed due to his negligence, and no loss was sustained by the Respondent.

4. After framing the issues and recording the pro and contra evidence of the parties, the trial Court delivered its judgment and decree on 28.5.2011, ruling in favour of the Respondent. Dissatisfied with this outcome, the applicant filed an appeal with the appellate Court. After thorough hearings, the appellate Court dismissed the applicants' appeal through its judgment dated 30.10.2014 and decree dated 01.11.2014. This sequence of events has precipitated the present Civil Revision.

5. At the very outset, the learned counsel representing the applicant has asserted that the impugned judgments and decrees of the lower courts are illegal, unlawful, and unwarranted under the law. He further contended that the suit filed by the Respondent for Damages was time-barred, but both the Courts below have not considered the question of limitation and illegally decreed the suit of the Respondent. He has also contended that the Respondent has not produced any documentary evidence showing payment of professional fees by him to the advocates nor examined any of the advocates to support his claim. Lastly, he asserted that both lower courts committed legal errors and acted beyond their jurisdiction in decreeing the suit in favour of the Respondent.

6. Conversely, while refuting the contention, the learned counsel representing Respondent supported the impugned judgments and decrees. He maintained that the lower courts recorded concurrent findings of fact based on a proper appreciation of the evidence. He has argued that the cause of action accrued to the Respondent after the dismissal of Civil

Revision on 14.10.2009, and the question of limitation was neither raised by the applicant in his written statement nor before the appellate Court. He argued that no case of misreading or non-reading of evidence has been made out, nor has any legal infirmity been pointed out that would warrant the interference of this Court in its revisional jurisdiction under Section 115 C.P.C.

7. The submissions have been exhaustively deliberated upon, and the extant record has been assiduously scrutinized with the invaluable assistance of the learned counsel for the parties.

8. The record unequivocally demonstrates that the applicant failed to raise the plea of limitation in his written statement, nor was any issue framed regarding this limitation. The applicant also did not bring up the plea of limitation before the appellate Court and is now attempting to raise it for the first time before this Court, which is impermissible at this stage of the proceedings under revisional jurisdiction. This position is well-supported by judicial precedent, notably in the case of *Sadiq Hussain and others*¹. In the cited case, the Supreme Court of Pakistan explicitly held that when the question of limitation was not raised to non-suit the Respondent during earlier stages, it is considered too late to introduce this plea at a later stage. The Court underscored that the High Court was justified in refusing to entertain the plea of limitation on the grounds that it had not been raised timely. Raising a new plea at a belated stage, particularly in revisional jurisdiction, undermines the orderly progression of the legal process and disrupts the adjudication of cases on their substantive merits. Allowing such practices would lead to undue delays and a proliferation of vexatious litigation, which the judicial system seeks to avoid. Therefore, in alignment with the established legal precedents and the principles of fair adjudication, the current plea regarding the limitation cannot be entertained. The applicant's failure to raise this issue at the appropriate stages reflects a procedural oversight that cannot be rectified at this stage.

9. Reverting to the merits of the case, the Respondent instituted a suit seeking the recovery of Rs.200,000 as damages against the applicant, contending that the applicant's spurious and fabricated litigation inflicted significant financial and mental distress. Respondent, alongside his sister and

¹Sadiq Hussain and others vs. Ghulam Rasool (1986 SCMR 322)

mother, holds ownership of agricultural land, which the applicant falsely claimed through a fictitious sale agreement. This precipitated a series of legal confrontations, including a dismissed initial suit, a civil appeal, and a civil revision, all of which the Respondent had to contest, necessitating the engagement of advocates and incurring substantial legal fees. The Respondent asserted that these incessant legal challenges not only engendered financial loss due to legal expenses but also inflicted considerable mental anguish upon him and his family, thus justifying the claim for damages. The basis of the Respondent's claim was predicated on the dismissal of an earlier suit filed by the applicant against him. The aforementioned claim reflects that the Respondent initiated the present suit to recuperate his costs as damages from the earlier suit. This suit is unequivocally untenable, as it was incumbent upon the Court adjudicating the earlier suit to award costs or special costs, if any.

10. In the case of *Shamim Akhtar and others*², it was unequivocally stated that costs incurred in a suit cannot be claimed through a separate suit following the decision of the original suit. Similarly, in *Ali Asghar*³, it was held that a suit for damages due to malicious civil proceedings is not maintainable because the party incurring costs can be compensated through the costs awarded in the original suit. Additionally, in *Haji Muhammad Shafi*⁴, it was emphasized that no separate suit could be filed for the recovery of costs or damages suffered due to the institution or defence of a previous civil suit. The reliance on Sections 35 and 35-A of the Civil Procedure Code (C.P.C.) highlights that litigation costs should be addressed within the original proceedings. Furthermore, in *Hafiz Abdullah*⁵, it was ruled that no separate suit lies for the recovery of costs incurred in formal litigation, reiterating the procedural framework's sufficiency within the original suit for addressing such costs. This principle was further underscored in *Muhammad Amin*⁶, where the Court noted that falsely prosecuting an ordinary civil action does not inherently result in damages that would justify a separate suit for recovery. The provision for cost awards within the original suit adequately compensates for expenses. It clears the defendant's reputation, thus negating the need for independent actions for mental anxiety or additional costs. Considering these precedents, it is clear that the Respondent's suit for

²Shamim Akhtar and others v. Mst. Fatima Bi (2001 YLR 3167)

³Ali Asghar vs. Fazal Akbar (1988 CLC 147)

⁴Haji Muhammad Shafi v. Mst. Hamidan Bibi (1990 MLD 597)

⁵Hafiz Abdullah vs. Mangal Sain (AIR 1932 Lahore 257)

⁶Muhammad Amin v. Jogendra Kumar Bannerjee (AIR 1947 PC 108)

damages, premised on the costs incurred and mental distress from previous litigation, does not meet the threshold for exceptional circumstances that would justify a separate action.

11. Irrespective of any other considerations, in the extant matter, the applicant instituted a suit seeking Specific Performance of Contract against the Respondent predicated upon an Agreement to Sell, which was adjudicated on its merits following the framing of issues. The nature of these proceedings did not possess the potential to impugn the liberty or reputation of the Respondent, thereby failing to satisfy the criteria for malicious prosecution. To the extent that the Respondent incurred pecuniary costs in the course of the civil litigation, the appropriate recourse was for the relevant Court to award costs pursuant to the provisions of Sections 35, 35-A, and 35-B of the Civil Procedure Code (C.P.C.), as amended by the Cost of Litigation Act, 2017. For the recuperation of litigation costs and any pecuniary detriment suffered, no independent cause of action for the recovery of damages for the tort of malicious prosecution of civil proceedings accrued to the Respondent.

12. The erroneous presumption that the mere inability of one party to substantiate a civil claim engenders an automatic entitlement for the opposing party to institute a suit for damages/malicious prosecution is not tenable in law. Affirming such a position would operate as a substantial deterrent, dissuading litigants from invoking legal processes to vindicate their rights and potentially impeding the right of access to justice. It would also engender further litigation even after the resolution of the original civil proceedings.

13. For the foregoing reasons, the instant Civil Revision is hereby **allowed**. The impugned judgments and decrees are found to be unsustainable in the eyes of the law and are consequently set aside. As a result, the Respondent's suit is dismissed, with no order as to costs.

J U D G E