

# HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

## **Civil Revision No.270 of 2019**

*[Oil and Gas Development Company Ltd and another vs. Isra Islamic Foundation  
(Guarantee) Ltd]*

Applicants by : Mr. Muhammad Irfan Chandio, Advocate  
Respondent by : Mr. Kamaluddin Advocate  
: Mr. Muhammad Ismail Bhutto, Addl: A.G  
Date of hearing : 27.01.2025  
Date of Decision : 27.01.2025

### JUDGMENT

**ARBAB ALI HAKRO, J.-** Through instant Civil Revision Application under Section 115 of the C.P.C., the applicants have impugned the Judgment dated 07.09.2019, passed by the learned III-Additional District Judge, Hyderabad, whereby the appeal preferred against the Order dated 27.11.2018, passed by the IV-Senior Civil Judge, Hyderabad in F.C. Suit No.274 of 2011, through which an application filed by the applicants under Order IX Rule 13 read with Section 12(2) C.P.C., was dismissed.

2. In brief, the facts of the case, as stated, are that the respondent filed F.C. Suit No. 274 of 2011 in the Court of the IV-Senior Civil Judge, Hyderabad, against the applicants, seeking recovery of Rs.7,81,701/-. This suit was decreed in favour of the respondent *exparte* vide Judgment dated 20.08.2014. Subsequently, the respondent filed Execution Application No. 53 of 2017. Upon receiving notice of the aforementioned execution application, the applicants filed an application under Order IX Rule 13 read with Section 12(2) of the CPC, which was dismissed vide Order dated 27.11.2018. Aggrieved, the applicants filed a Civil Miscellaneous Appeal, which was also dismissed vide impugned Judgment dated 07.09.2019. Hence, this revision application.

3. Learned Counsel for the applicants contends that they became aware of the *exparte* decree during the execution proceedings when they were served and appeared therein. He further argues that applicants submitted an application to set aside the *exparte* decree, which was dismissed as time-barred. He further asserts that neither the summons/notice for the suit was served upon the applicants nor were all modes of service adopted. Regarding the statement dated 22.11.2012 filed by Mr. Liaquat Ali Laghari, Advocate, which included an undertaking that he would file

his Vakalatnama on behalf of the applicants, the applicants had not appointed or authorized him to file the statement; it was managed. He contends that the ex parte Judgment and Decree were obtained by the respondent through misrepresentation and fraud, thus warranting their set-aside.

4. Conversely, the learned counsel for the respondent as well as A.A.G., while refuting the contention, argued that the Revision is not sustainable under the law and it is a case of concurrent findings, and in Revisional Court, the facts recorded by the inferior Courts cannot be disturbed; therefore, this Revision is not maintainable under the law. Counsel for the Respondent further contended that the applicants were duly served through courier service, and on their behalf, an advocate appeared and filed a statement that he would file his Vakalatnama on behalf of the applicants.

5. I have heard the learned counsel for the parties and perused the record with their assistance.

6. Upon a meticulous examination of the record, it emerges that on 22.11.2012, the learned counsel for the Respondent/Plaintiff submitted OCS receipts and delivery confirmation reports under the cover of a statement. These documents indicated that the summons were delivered to individuals identified as Shahzad and Arsalan. On the same day, a certain Mr. Liaquat Ali Laghari, Advocate, submitted a statement declaring his intention to file a Vakalatnama on behalf of OGDCL/applicants on the next date of hearing. The record further discloses that subsequently, on 11.12.2012, the aforementioned Advocate filed an application for the provision of annexures on behalf of the applicants/defendants, which was duly granted by the trial court. The applicants assert they had neither engaged Mr. Liaquat Ali Laghari as their legal representative nor issued him any authority letter. The statement filed by the said Advocate conspicuously lacks the endorsement of his ledger number, neither on the statement nor on the application for the supply of copies. Furthermore, despite his undertaking, he did not file his Vakalatnama. This raises a critical question: how did the trial court, in the absence of a Vakalatnama and without an authority letter from OGDCL, which operates as a corporate entity, recognize Mr. Laghari as an Advocate for the applicants. This lapse, arguably a procedural oversight, effectively allowed the memo of plaint to be supplied to him, and the

service was deemed proper upon the applicants.

7. Order V Rule 13 C.P.C provides meaningful context to the abovementioned situation. According to this provision, in lawsuits related to any business or work against a person who does not reside within the local limits of the Court's jurisdiction, service of summons on any manager or agent personally conducting such business or work on behalf of the defendant within those limits shall be deemed valid service. Applying this rule to the scenario involving Mr. Liaquat Ali Laghari, one might argue that the trial court perceived him as a manager or agent of OGDCL responsible for conducting business within the Court's jurisdiction. Yet, this presumption is substantially undermined by the absence of a Vakalatnama and an authority letter, which are essential procedural documents validating an individual's legal authority to represent a company. Despite the delivery confirmation reports citing Shahzad and Arsalan's receipt of the summons, the lack of appropriate authentication from OGDCL's end fundamentally questions the completeness and propriety of the service. The procedural irregularities highlighted emphasize the Court's duty to ensure due process. In the absence of verifiable authorizations, especially for corporate entities like OGDCL, assumptions of representation jeopardize the procedural integrity of legal proceedings. In view of the above, it is unequivocally determined that the summons upon the defendants/applicants were not duly served.

8. Furthermore, the trial Court's dismissal of the application under Order IX Rule 13 C.P.C was predicated on the notion that it was hopelessly time-barred. The trial Court reasoned that Mr. Muhammad Irfan Chandio filed his Vakalatnama on behalf of the applicants/defendants on 25.07.2017 in the execution proceedings and noted that the Vakalatnama itself was signed on 21.07.2017. Consequently, an application under Order IX Rule 13 CPC was filed on 21.08.2017, surpassing the stipulated 30-day deadline defined by Article 164 of the Limitation Act. According to this provision, the limitation period for filing an application to set aside an ex parte decree is 30 days from the date of decree issuance in instances where the summons is duly served. In cases where the summons is not duly served, the limitation period commences from the date when the defendant acquires knowledge of the decree.

9. Considering the earlier assertion that the summons were not duly

served on the applicants/defendants, the limitation period, in this context, should start from the date when the applicants/defendants became aware of the decree. The trial Court's decision to consider 21.07.2017, the date when the Vakalatnama was signed, as the point of knowledge acquisition is contentious. In my view, this assumption is flawed, as the mere receipt of summons or notices in execution proceedings and the signing of the Vakalatnama do not necessarily equate to acquiring knowledge of the exparte decree. Rather, the critical date should be when the Vakalatnama was officially filed in Court on 25.07.2017 and when the Advocate for the applicants/defendants made his court appearance, thereby becoming cognizant of the exparte decree. Thus, the date of knowledge acquisition for the exparte decree is accurately 25.07.2017. Given this, the application to set aside the exparte decree, filed on 21.08.2017, falls within the permissible period of 30 days. The trial Court's reliance on the signing date of the Vakalatnama rather than its actual filing date introduces procedural ambiguity. The act of signing does not necessarily translate into immediate action or awareness on the part of the applicants/defendants. The functional act that triggers awareness in legal terms is the Advocate's court appearance and the formal filing of the Vakalatnama, which unequivocally establishes the Advocate's authority to represent the clients.

10. For the foregoing reasons, the findings recorded by the courts below are illegal, erroneous, and contrary to the facts and record; hence, the same are set aside. Consequently, this revision application is **allowed**, and the impugned Judgment dated 07.09.2019, passed by the learned appellate Court, and the Order dated 27.11.2018, passed by the learned trial Court, whereby the application of the applicants/defendants for setting aside the exparte Judgment dated 20.08.2014 and decree dated 25.08.2014 was dismissed, are set aside. Resultantly, the application of the applicants/defendants to set aside the aforementioned exparte Judgment and decree is allowed at the cost of Rs. 5,000/-. Consequently, the exparte Judgment and decree are set aside, and the suit of the respondent/plaintiff shall be deemed pending. The parties are directed to appear before the trial Court, and the trial Court is directed to conclude the trial within 04 months, without fail.

**J U D G E**