

IN THE HIGH COURT OF SINDH, KARACHI

Ind Appeal No. 71 of 2023

[Muhammad Mustafa vs. Syed Azfar Ali & others]

Appellant	Through Mr. Yaseen Ali, Advocate
Respondent-1	Through Mr. Muhammad Ramzan, Advocate
Date of Hearing	29.01.2026
Date of Judgment:	29.01.2026

J U D G M E N T

ARSHAD HUSSAIN KHAN, J. This Second Appeal is directed against the judgment and decree dated 14.01.2023, passed by the learned District Judge, Malir, Karachi, whereby Civil Appeal No.110/2019 was allowed, the judgment and decree dated 31.07.2019, passed by the learned Senior Civil Judge-IV, Malir, Karachi, in Civil Suit No.341/2013 were set aside, and the suit of the plaintiff was decreed as prayed.

2. Brief facts necessary for disposal of the present appeal are that the respondent/plaintiff instituted Civil Suit No.29/2009 (renumbered as 341/2013) for recovery of damages amounting to Rs.15,00,000/-. The plaintiff's case was that the appellant/defendant had submitted a complaint dated 08.04.2000 to the Director General (Administration), Port Qasim Authority, pursuant to which a preliminary inquiry was initiated against the plaintiff. He remained under suspension from 26.04.2000 to 21.08.2001 and was compulsorily retired vide order dated 22.08.2001. His departmental appeal was dismissed on 23.10.2001, whereafter he filed Appeal No.1612(K)(CE)/2001 before the Federal Services Tribunal, which was allowed on 04.02.2006 by setting aside the order of compulsory retirement and directing his reinstatement along with de novo disciplinary proceedings. The plaintiff was reinstated vide office order dated 22.03.2006, and upon conclusion of the de novo inquiry on 07.12.2007, he was exonerated of all charges. The Port Qasim Authority subsequently granted him back benefits and regularized his suspension and out-of-service period through orders dated 13.02.2008 and 13.03.2008. The defendant

contested the aforesaid suit, which was ultimately dismissed by the learned trial Court vide judgment and decree dated 31.07.2019 after a full-fledged trial. The plaintiff preferred Civil Appeal No.110 of 2019 before the learned District Judge, Malir, who vide judgment and decree dated 14.01.2023 allowed the appeal, set aside the trial Court's findings, and decreed the suit as prayed for. Aggrieved thereby, the appellant has filed the present second appeal challenging the said decision.

3. Learned counsel for the appellant contended that the impugned judgment and decree dated 14.01.2023 are contrary to law, based on misreading and non-reading of material evidence, and in disregard of the binding judgment dated 17.09.2013 passed in Constitutional Petition No.D-3213/2012. It was argued that the first appellate court exceeded its jurisdiction by reversing a well-reasoned trial court judgment dated 31.07.2019, which had been passed after remand and full-fledged trial, without identifying any perversity, illegality, or procedural defect. The finding that the trial court acted in a hasty manner was asserted to be wholly unsupported by the record.

4. Learned counsel for the respondent supported the impugned judgment and contended that the lower appellate court rightly set aside the trial court's judgment, which failed to properly appreciate the evidence. It was argued that the appellant had levelled false and malicious allegations through the application dated 08.04.2000, resulting in departmental proceedings, suspension, compulsory retirement, and financial and reputational loss. Reliance was placed on the application dated 20.04.2009, wherein the appellant allegedly admitted making false allegations. Learned counsel argued that the suit was not barred by limitation as the cause of action concluded upon exoneration and reinstatement, and that proof of publication was not necessary as the false allegations had lowered the respondent's reputation within the department. It was further contended that the respondent was lawfully entitled to retain the amount already recovered in execution proceedings.

5. I have heard learned counsel for the parties and carefully perused the material available on the record.

A perusal of the record reveals that the suit was initially decreed under Order XII Rule 6 CPC. However, the said decree was set aside by this Court in CP No.D-3213 of 2012, and the matter was remanded to the learned trial Court with directions to decide the defamation case afresh after affording full opportunity to the parties to adduce evidence. It was further directed that the amount already recovered by the respondent shall remain with him, subject to the final outcome of the suit. Upon remand, the learned trial Court framed issues pertaining to maintainability, alleged false allegations, defamation, and relief. After recording evidence and hearing arguments, the learned trial Court dismissed the suit vide judgment and decree dated 31.07.2019, holding, inter alia, that the suit was barred by limitation and that the essential ingredients of defamation were not proved. The respondent/plaintiff was also directed to refund the amount deposited by the appellant in execution proceedings. The respondent challenged the said judgment and decree before the learned District Judge, Malir, in Civil Appeal No.110 of 2019. Vide judgment dated 14.01.2023, while condoning a delay of four days, the learned appellate Court allowed the appeal, reversed the findings of the trial Court, decreed the suit, and held that the plaintiff was not liable to refund the amount recovered in execution.

6. The record shows that trial court, while adjudicating Civil Suit No.341 of 2013, observed that the suit filed by the respondent/plaintiff under Section 9, C.P.C., seeking damages for alleged defamation was barred by limitation under Article 24 of the Limitation Act, 1908, as the application complained of was filed on 08.04.2000, the FST reinstated the respondent on 02.02.2006 whereas the suit was instituted on 11.02.2009. The court found that the defendant's application did not contain any false or defamatory content, as it merely sought the transfer of the plaintiff and did not cause publication to the public. The suspension and compulsory retirement of the plaintiff were departmental actions, and there was no evidence that these were caused directly by the defendant. On these findings, the trial court dismissed the suit and directed the plaintiff to refund any amount recovered in execution proceedings.

7. The learned lower appellate court disagreed with the trial court's finding that the suit was barred under Article 24 of the Limitation Act,

1908. It held that Articles 24 and 25 of the Limitation Act do not apply to cases of libel and slander, and therefore the suit could not be dismissed on the ground of limitation. In support of this view, reliance was placed on the case of *Mst. Ruby Akhtar v. Capt. S.M. Aslam*. On this premise, the appellate court reversed the trial court's finding on limitation and proceeded to allow the appeal.

8. It is well settled that under Section 100 CPC, interference in a second appeal is permissible only where the case involves a substantial question of law. Mere concurrent or conflicting findings of fact by the Courts below do not, by themselves, justify interference. However, where such findings are the result of misapplication of law, non-reading or misreading of material evidence, or assumption or failure to exercise jurisdiction vested by law, a substantial question of law arises. In such circumstances, this Court is competent to examine the judgments and decrees of the Courts below vis-à-vis the evidence brought on record by the parties and to correct any patent illegality or jurisdictional defect.

9. As far as the contention of the learned counsel for the respondent that limitation commenced only upon exoneration and reinstatement is concerned, the same is misconceived. In a defamation claim, the cause of action accrues on the date of publication of the alleged defamatory statement. The application in question was submitted on 08.04.2000, whereas the suit was filed in 2009. Subsequent departmental proceedings, reinstatement, or exoneration do not extend or postpone limitation. The trial court therefore rightly held the suit to be time-barred, and the contrary finding by the first appellate court is based on misapplication of law.

10. The respondent has relied upon the case of *Karachi Parsi Co-operative Housing Society Ltd. v. Karachi Municipal Corporation*, [1975 SCMR 368] contending that limitation for recovery suits begins when the right to sue accrues, not from the date of payment. The Supreme Court held that for claims seeking refund of amounts paid for services the authority was obliged to provide, the right to sue accrued as and when each payment was made, distinguishing such claims from those under Article 62 of the Limitation Act. However, the present case differs materially, as the respondent's suit for damages arises from alleged defamation and loss of reputation caused by false allegations,

and not from a claim for recovery of specific amounts wrongly paid to a government or municipal authority. Therefore, while the principles regarding accrual of cause of action under the Limitation Act are noted, the facts and nature of the claim in the cited judgment are distinguishable and the decision is not directly applicable to the instant dispute.

11. Besides, the learned lower appellate Court has placed reliance upon the judgment reported as *Mst. Ruby Akhtar v. Capt. S.M. Aslam* [1995 CLC 1332] to hold that Articles 24 and 25 of the Limitation Act, 1908 were not applicable and that the residuary Article 120 would govern the matter. Such reliance appears to be misconceived. In the cited case, the suit was specifically founded upon a claim for damages arising out of the offence of Qazf under the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979. The learned Court therein held that the right to sue accrued only upon judicial determination of the falsity of the allegation of Zina by the Federal Shariat Court. The ratio of that case was thus premised upon the peculiar and technical nature of Qazf, which requires prior adjudication establishing falsity of the imputation as a condition precedent. The present case, however, neither arises from proceedings under the Qazf Ordinance nor is it contingent upon any prior judicial determination of falsity as a prerequisite to institution of the suit. It is, in essence, a claim for damages based on alleged defamatory imputation, thereby squarely attracting Articles 24 and 25 of the Limitation Act, 1908, which specifically govern suits for compensation for libel and slander and prescribe a limitation period of one year from the date of publication or utterance. The factual matrix and legal foundation being materially distinguishable, the principle laid down in *1995 CLC 1332* is not applicable to the controversy in hand. Consequently, the learned lower appellate Court erred in invoking Article 120 of the Limitation Act in the present matter.

12. Reliance upon the alleged admission contained in the application dated 20.04.2009 is equally misconceived. Firstly, the purported admission was not unequivocal in nature, as observed in paragraphs 10 and 11 of the judgment passed by the learned Divisional Bench of this Court in Constitutional Petition No. 3213 of 2012 (PLD 2014 Sindh

224). An admission, to be binding and conclusive, must be clear, unambiguous and unequivocal, which is not the case here. Secondly, even if, for the sake of argument, such statement is assumed to constitute an admission, the respondent was still under a legal obligation to prove the essential ingredients of defamation, particularly publication of the alleged defamatory material to a third party and consequent injury to reputation. No evidence was brought on record to demonstrate that the contents of the complaint were circulated beyond official channels or communicated to any third person in a manner attracting liability for defamation. The learned trial Court, therefore, rightly insisted upon strict proof of publication, which is a sine qua non for maintaining a suit for defamation.

13. As regards the plea of coercion allegedly raised by the appellant in relation to the application dated 20.04.2009, the same clearly appears to be an afterthought. Such a plea was neither taken in the written statement nor raised during earlier round of proceedings, nor supported by any contemporaneous evidence. Consequently, the learned trial Court did not consider the same. However, the learned lower appellate Court appears to have treated the appellant's statement as the basis for decreeing the suit for defamation. It is settled law that a claim for defamation must stand on its own footing and must be proved through independent, cogent and reliable evidence. In the present case, the respondent failed to discharge this burden, and therefore the decree passed by the lower appellate Court cannot be sustained in law.

14. Insofar as the contention that the learned first appellate Court was justified in re-appreciating the evidence is concerned, the same is misconceived. No doubt, a first appellate Court possesses wide powers to reassess and reappraise the evidence; however, it cannot lightly overturn well-reasoned findings of the trial Court unless it records cogent reasons demonstrating perversity, misreading or non-reading of material evidence, or an erroneous application of law. A mere difference of opinion on appreciation of facts does not furnish a lawful basis to reverse well-reasoned findings. In the present case, the reversal was founded upon incorrect application of limitation law and defamation principles, raising a substantial question of law under Section 100, C.P.C.

15. As regards the directions permitting retention of the amount recovered in the earlier round of proceedings, the same cannot be sustained once the very decree in favour of the plaintiff is found to be legally unsupportable. In the absence of a valid and subsisting decree, no independent or vested right could survive in favour of the respondent to retain the said amount.

16. The learned trial Court, in my considered view, rightly held that an application submitted to a competent authority seeking initiation of departmental inquiry does not, by itself, amount to actionable defamation, unless it is established that the contents thereof were published beyond lawful authority and were actuated by malice. Mere submission of a complaint before a competent forum, in the discharge of a lawful right, does not attract liability unless the essential ingredients of defamation are strictly proved. In the present case, no evidence was brought on record to demonstrate that the alleged application was publicized or circulated beyond official channels so as to constitute publication to a third party in the legal sense.

17. Moreover, it is a matter of record that the respondent was compulsorily retired by the Port Qasim Authority (PQA). He challenged the said action before the Federal Services Tribunal (FST), which, after examining the facts and evidence, set aside the order of compulsory retirement and directed his reinstatement in service. In compliance with the Tribunal's judgment, PQA reinstated the respondent and conducted de novo disciplinary proceedings, which culminated in his complete exoneration. The respondent was granted all back benefits, and the entire period of suspension and forced retirement was duly regularized. Consequently, his service, rights, and benefits stood fully restored, and any prejudice arising from the earlier retirement or suspension was effectively remedied, thereby substantially weakening the foundation for any additional claim of damages on that account.

18. It is further a matter of record that in the proceedings before the FST, the present appellant was not impleaded as a party. While the PQA, being the authority that had initially ordered the respondent's compulsory retirement and later reinstated him after a de novo inquiry, was also not impleaded as a defendant in the present suit for damages.

It is not disputed that the disciplinary proceedings were initiated on the basis of numerous complaints lodged by other employees of PQA against officials of the Welfare Department, of which the respondent was also a member. The inquiry was not confined to the respondent alone but extended to other employees as well. This circumstance clearly negates any suggestion that the proceedings were singularly directed against the respondent solely on the complaint of the appellant or were actuated by any personal vendetta. These facts clearly indicate that the appellant was neither responsible for the respondent's compulsory retirement nor instrumental in his reinstatement. If any actionable wrong had arisen from the retirement order, the same would have been attributable to PQA, which, being a necessary and proper party, was not impleaded in the suit. In such circumstances, fastening liability upon the appellant for the respondent's retirement or its consequences does not appear legally sustainable.

19. In view of the foregoing discussion, it is manifest that the impugned judgment and decree passed by the learned first appellate Court suffer from misapplication of law, misreading of the record, and improper exercise of appellate jurisdiction, thereby giving rise to substantial questions of law within the meaning of Section 100, C.P.C.

Consequently, by my short order dated 29.01.2026, this Second Appeal was allowed. The impugned judgment and decree dated 14.01.2023, passed by the learned District Judge Malir Karachi in Civil Appeal No.110/2019, were set aside, and the judgment and decree dated 31.07.2019, passed by the learned trial Court in Civil Suit No.341/2013 were restored.

These are the reasons of my short order dated 29.01.2026.

JUDGE