

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA

Civil Revision Application No.S-147 of 2024

Before;
Mr. Justice Ali Haider ‘Ada’.

Applicant : Ajab Khan son of Qadir Bux
Brohi, *through* Mr. Habibullah G.
Ghouri, Advocate.

Respondent No. 1 to 4 : Province of Sindh and Others,
Through Mr. Abdul Waris Bhutto,
Assistant Advocate General,
Sindh.

Respondents : 5. Muzafar Ali (*Nemo*).
6. Sultan Ahmed son of Qalandar
Bux Soomro, *through* Mr. Habib-
ur-Rehman Shaikh, Advocate.

Date of Hearing : 24.08.2026.
Date of Decision : 24.08.2026.
Date of Reasons : 31.08.2026.

JUDGMENT

ALI HAIDER ‘ADA’, J.- Through the instant Civil Revision Application, the applicant has called into question the judgment and decree dated 26.08.2024 and the final decree dated 06.09.2024, passed by the learned Additional District Judge-II, Shikarpur, (**Appellate Court**), in Civil Appeal No.33 of 2024, whereby, being aggrieved thereof, the applicant has invoked the revisional jurisdiction of this Court.

2. The crux of the litigation, in brief, is that respondent No.6, (**Plaintiff**) namely Sultan Ahmed, instituted Suit No.200 of 2016 for specific performance of contract, cancellation of the registered sale deed and consequential correction of the relevant entries before the learned Senior Civil Judge-II, Shikarpur (**trial Court**). The case set up by the plaintiff was that he had purchased the land in question from respondent No.5, namely Muzafar Ali, who was arrayed as defendant No.5 in the suit, on 07.01.2013. According to the plaintiff, despite the said transaction, respondent No.5 subsequently and unlawfully sold the same land to the applicant through a registered sale deed dated 21.07.2016. The plaintiff, therefore,

challenged the validity of the said sale deed and also sought specific performance of the alleged contract in his favour.

3. The applicant as well as respondent No.5 was proceeded against ex parte. After recording the evidence produced by the plaintiff, the learned trial Court, vide judgment and decree dated 07.12.2017, dismissed the suit instituted by Plaintiff.

4. Aggrieved by the judgment and decree passed by the learned trial Court, the plaintiff preferred an appeal before the learned Additional District Judge-V, Shikarpur (**First Appellate Court**), which was registered as Civil Appeal No.72 of 2017. The learned First Appellate Court, vide its judgment dated 18.12.2018, allowed the appeal and remanded the matter to the learned trial Court with the direction to provide the parties an opportunity of hearing and to examine any material evidence, if produced, and thereafter decide the suit afresh in accordance with law. Pursuant to the said order of remand, the matter was entrusted to the learned Senior Civil Judge-I, Shikarpur (**Trial Court**). The learned trial Court resumed the proceedings, afforded the parties an opportunity to lead evidence, and ultimately concluded the trial.

5. Thereafter, upon remand of the matter, respondent No.5, namely Muzafar Ali, appeared before the learned trial Court and deposed that the registered sale deed executed in favour of the applicant was fake and bogus. The learned trial Court thereafter recorded the statements of the witnesses produced by the parties. From the office of the Sub-Registrar, the concerned officials were also examined, who acknowledged and confirmed the validity and registration of the sale deed in favour of the applicant. After completion of the proceedings, the learned trial Court passed judgment and decree dated 16.05.2024, whereby respondent No.5 was directed to pay the consideration amount of Rs.900,000/- along with Rs.600,000/- as compensation, making a total amount of Rs.1,500,000/-, to the plaintiff.

6. Being aggrieved by the said judgment and decree, the plaintiff/respondent No.6 preferred an appeal before the

learned Additional District Judge-II, Shikarpur (**Appellate Court**). The appeal was allowed through the impugned judgment and decree, followed by the final decree, whereby the learned Appellate Court allowed the plaintiff's claim and directed him to pay the remaining sale consideration, whereafter respondent No.5 was directed to execute a registered sale deed in favour of the plaintiff. It was further directed that, in the event of failure on the part of respondent No.5 to execute the sale deed, the same process would be completed through the Nazir of the Court.

7. The applicant, being aggrieved by the aforesaid judgment and decree passed by the learned Appellate Court, has invoked the revisional jurisdiction of this Court.

8. Learned counsel for the applicant contended that the suit for specific performance had initially been dismissed by the learned trial Court, which, after remand of the matter, merely directed respondent No.5, Muzafar Ali, to pay the amount of consideration to the plaintiff. He submitted that the learned Appellate Court, without properly appreciating or determining the evidence available on record and without assigning cogent reasons, proceeded to decree the suit in favour of respondent No.6/plaintiff. According to learned counsel, the plaintiff was under an obligation to establish his entitlement to specific performance through cogent, confidence-inspiring and legally admissible evidence, but failed to discharge such burden. It was further contended that the judgments of the Courts below are mutually inconsistent and, therefore, cannot be sustained in law. He accordingly prayed that the instant Civil Revision be allowed and the impugned judgment and decree be set aside. So far as the question of limitation concerning the revision application is concerned, learned counsel submitted that certain documents were supplied by the learned lower Courts on 17.12.2024, and the instant revision application was filed on the very next day. It was contended that the delay, if calculated, would be of merely one or two days and was neither deliberate nor intentional, but occurred solely due to

the late supply of the requisite documents. Learned counsel further submitted that this Court has the discretion to condone such marginal delay, particularly when an application under Section 5 of the Limitation Act is already available on record as CMA No.86 of 2025.

9. Conversely, respondent No.5 failed to appear and join the proceedings despite service having been effected through all prescribed modes, including publication. As such, his service was duly held sufficient. Learned counsel for respondent No.6/plaintiff, however, supported the impugned judgment and decree and submitted that the agreement to sell had been duly proved through the evidence available on record. He further contended that respondent No.5, Muzafar Ali, appeared before the learned trial Court and categorically deposed that the sale deed relied upon by the applicant was fake and bogus. According to him, the applicant had failed to appear before the learned trial Court and had not established any lawful right in respect of the subject property. He further submitted that the directions issued by the learned Appellate Court regarding the cancellation of the sale deed and execution of a fresh sale deed in favour of respondent No.6/plaintiff were lawful and justified. He, therefore, prayed for dismissal of the instant Civil Revision and maintaining the impugned judgment and decree.

10. Learned Assistant Advocate General, appearing for the respondents, also supported the impugned judgment and decree, contending that the respondent No.6/plaintiff had prima facie established his case on the basis of the evidence available on record and that no ground had been made out warranting interference by this Court in its revisional jurisdiction.

11. Heard learned counsel for the parties and perused the material available on record.

12. At the very outset, it is necessary to examine the validity and legality of the proceedings conducted by the learned trial Court, both before and after the matter was remanded by the

learned First Appellate Court. The original judgment and decree dated 07.12.2017, when examined in the light of the record, prima facie reflects that the trial proceedings were conducted without due observance of the procedure prescribed by law. The irregularities committed during the course of trial are not merely technical in nature; rather, they affect the manner in which the case was adjudicated and, therefore, go to the root of the proceedings. Accordingly, before examining the merits of the rival claims, it is imperative to determine whether the proceedings conducted by the learned trial Court were in accordance with the requirements of law and whether the subsequent proceedings undertaken pursuant to the order of remand could cure the defects apparent in the original trial.

13. The record reveals that the learned trial Court, while conducting the original proceedings, did not follow the procedure prescribed by law. It is rather surprising that the learned trial Court proceeded to record evidence without first framing the necessary issues arising from the pleadings of the parties. A perusal of the original judgment further shows that no issues whatsoever were framed or even identified for determination. Thus, the evidence was recorded in the absence of a proper formulation of the questions of fact and law requiring adjudication, which constitutes a serious procedural irregularity affecting the very manner in which the suit was tried.

14. No doubt, the said judgment and decree was subsequently set aside by the learned First Appellate Court vide judgment dated 18.12.2018, and the matter was remanded to the learned trial Court. However, while passing the order of remand, the learned First Appellate Court also appears to have overlooked the fundamental procedural defect committed during the original trial. The learned First Appellate Court merely directed the learned trial Court to afford the parties an opportunity of hearing and to examine any material evidence, if produced, and thereafter decide the matter afresh, without first examining whether the trial had

been conducted in accordance with the procedure prescribed by law, particularly whether the requisite issues had been framed on the basis of the pleadings.

15. Thereafter, pursuant to the order of remand, the learned trial Court resumed the proceedings. Respondent No.6/plaintiff, Sultan Ahmed, was afforded an opportunity to lead his evidence in support of his claim. Subsequently, the attesting witness, as well as the concerned officials from the office of the Sub-Registrar, were examined. Their evidence, as reflected from the record, supported the execution and validity of the sale deed in favour of the applicant. On the other hand, respondent No.5, Muzafar Ali, being the original owner of the subject property, appeared as a witness and made a statement in support of the claim set up by respondent No.6/plaintiff, Sultan Ahmed.

16. Once the learned First Appellate Court had set aside the earlier judgment and decree and remanded the matter with a specific direction to afford the parties an opportunity of hearing, the learned trial Court was required to recommence the proceedings in accordance with law and to issue fresh notices/summons to the concerned parties so as to ensure their effective participation in the proceedings. Despite this, the learned trial Court proceeded with the matter and ultimately passed the judgment and decree dated 16.05.2024.

17. When the aforesaid judgment and decree was challenged by respondent No.6/plaintiff before the learned Appellate Court, the learned Appellate Court, however, failed to examine the fundamental procedural defects underlying the proceedings before the learned trial Court. In particular, the learned Appellate Court did not properly scrutinize the manner in which the evidence had been recorded after remand, the basis upon which such evidence had been treated as legally admissible, or the procedure adopted by the learned trial Court in ultimately passing the judgment and decree.

18. More importantly, the learned Appellate Court overlooked the fact that, despite the order of remand, the prescribed procedure for issuance and service of fresh summons/process upon the concerned parties had not been duly followed. Equally significant is the fact that the basic foundation of the trial, namely, framing of appropriate issues arising out of the pleadings of the parties, was never undertaken. The learned Appellate Court, instead of addressing these fundamental defects and determining whether the proceedings before the learned trial Court had been conducted in accordance with law, proceeded to decide the appeal on merits and granted relief to respondent No.6/plaintiff.

19. It is also significant that, while deciding the appeal, the learned First Appellate Court committed a serious procedural irregularity by directly decreeing the suit without first determining the points arising for consideration from the pleadings and evidence available on record. The Appellate Court was required to independently examine the legality of the proceedings conducted by the learned trial Court and to determine whether the plaintiff had established his entitlement to the relief claimed. Instead, the suit was decreed without a proper determination of the points upon which the rights of the parties depended.

20. It is true that, where a defendant, at the first hearing of the suit, makes no defence, it may not be necessary to frame issues in view of Order XIV, Rule 6 of the Code of Civil Procedure. However, the said provision is not attracted unless the requirements of the “first hearing” as contemplated under Order X, Rule 1 of the Code are duly satisfied. For ready reference, the relevant provision is reproduced hereunder:

ORDER X
EXAMINATION OF PARTIES BY THE COURT

1. Ascertainment whether allegations in pleadings are admitted or denied. *At the first hearing of the suit the Court shall ascertain from each party or his pleader*

whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

21. Actually, the purpose of framing issues is to ascertain the material propositions of fact or law upon which the parties are at variance, thereby defining the scope of the trial and confining the evidence and adjudication to the matters actually in controversy. The Supreme Court of India, in ***Makhan Lal Bangal v. Manas Bhunia and others, (2001) 2 SCC 652***, while emphasizing the importance of framing issues, observed that the stage of framing issues determines the scope of the trial, narrows the area of conflict between the parties and enables the Court to identify the real controversy requiring adjudication.

22. The same principle has recently been reiterated by the Supreme Court of India in ***Pramod Shroff v. Mohan Singh Chopra, 2026 SCC OnLine SC 598, decided on 16.04.2026***, wherein it was held that although formal framing of issues may not be mandatory in an ex parte proceeding, the judgment must nevertheless conform to the requirements of the Code of Civil Procedure. The Court emphasized that the Court is required to identify the points for determination, which serve the same essential purpose as issues, and to record its findings thereon. It was further held that omission to frame issues, where such omission causes prejudice to a party, may vitiate the trial.

23. The purpose of framing issues in civil litigation is to ensure that the parties are apprised of the crucial and material questions of fact and law arising from the pleadings, which they are required, in law, to prove or disprove through evidence to establish their respective claims or defence. Properly framed issues thus define the scope of the trial and enable the Court to determine the controversy between the parties on both factual and legal aspects. Reliance in this

regard may be placed upon the judgment of the august Supreme Court of Pakistan in **Haji Farman Ullah versus Latif-ur-Rehman (2015 SCMR 1708)**. The august Supreme Court of Pakistan, in the case titled **Mst. Sughran Bibi and others v. Mst. Jameela Begum and others (2001 SCMR 722)**, observed as under:—

"We are afraid, the argument in the facts and circumstances of this case has no force. No doubt, parties in the suit are entitled to make application for amendment of issues, but the fact remains that preliminary it is the duty of the court to frame the issues correctly so that the same should reflect correctly controversies arising from the pleadings of the parties so that effective judgment could be rendered on the disputed facts and the parties should know as to on what facts the evidence was to be led, therefore, the act of the Court in the case of not framing issues correctly and debarring the petitioner from leading evidence to prove his case as made out in the pleadings was rightly corrected by framing issue No.5 and sending the case for production of evidence."

24. The august Supreme Court of Pakistan in a case **Mst. Rasheeda Bibi and others v. Mukhtar Ahmad and others (2008 SCMR 1384)** held as under: -

"It is the duty of the Court to frame correct issues but the parties were also under duty to make application for amendment of issues. Nevertheless, the Court was bound to frame issue correctly preliminary on pleadings of the parties, because the issues framed by the court correctly reflects the controversies arising from the pleadings of the parties and the Court thus can render an effective judgment on the disputed facts and the parties also knows on what facts the evidence should be led. Reference is made to the case of "Roazi Khan and others v. Nasir and others" (1997 SCMR 1849), Mst Sughran Bibi and others v. Mst. Jameela Begum and other (2001 SCMR 772). In case of Ananta Kumar majumdar and others v. Gopal Chandra Majumdar and tohers PLD 1961 Dacca 65, it has been held that plea of framing of a particular issue was not pressed by the parties effected is no ground for condoning failure to frame necessary issue and the mandate of Order XIV, Rule 1, C.P.C. reveals that it is incumbent upon the Court to frame issues in the light of controversies raised in the pleadings and after examination of the parties, if necessary. Issues of law and facts are to be illustrated clearly to enable the parties to understand the points at issue to support their respective claims by recording evidence on all material points. It is the settled principle

of law that action or inaction on the part of the Court cannot prejudice a party to litigation and the failure of the Courts below to determine material issue amounted to exercise of jurisdiction illegally or with material irregularity."

25. So far as the question of condonation of delay in filing the instant Civil Revision is concerned, the record reveals that certified copies of some of the documents, as annexed with the revision application, were delivered to the applicant on 17.12.2024. In contrast, the instant Civil Revision was filed on the very next day, i.e., 18.12.2024. No doubt, the impugned decree was passed on 06.09.2024; however, the applicant received the requisite certified copies only on 17.12.2024. The application under Section 5 of the Limitation Act has also been placed on record. There is nothing on record to suggest that such delay was deliberate, intentional conduct on the part of the applicant. In these circumstances, the marginal delay deserves to be condoned. The august Supreme Court of Pakistan, in **Muhammad Arif Saeed v. Shamim-ul-Haq (1996 SCMR 920)**, held that disputes should, as far as possible, be decided on merits and, in the circumstances of that case, upheld the condonation of delay by the High Court while remanding the matter for fresh decision. The further question is whether, in the peculiar facts and circumstances of the case, the applicable law was correctly invoked by the learned trial Court and whether the verdict rendered by it was legally sustainable or suffered from such irregularity as would amount to illegality, particularly where the matter requires reconsideration in accordance with the proper legal mechanism. Where the Court finds that the matter ought to be proceeded with afresh in accordance with law, an objection regarding marginal delay should not ordinarily be permitted to defeat adjudication of the dispute on merits. In such circumstances, the delay, if any, may appropriately be condoned in the interest of justice. Reliance in this regard may be placed upon **Col. (Retd.) Ayub Ali Rana v. Dr. Carlite S. Pune and another (PLD 2002 SC 630)**. Furthermore, where the question of right is seriously

contested by an applicant, dismissal of the proceedings on mere grounds may result in depriving him of his substantive right, particularly where no fault or negligence can be attributed to him. Accordingly, where the delay is neither deliberate nor attributable to negligence, such delay may be condoned in the interest of justice. Reliance may be placed upon the judgment of **Pir MUHAMMAD AZAM versus Pir AZIZULLAH, 2011 CLC 355.**

26. Consequently, the impugned judgment and decree of the learned First Appellate Court suffer from a material procedural irregularity, as the relief of specific performance was granted without a proper determination of the foundational questions arising from the pleadings and evidence. The omission is particularly prejudicial to the applicant, whose registered sale deed and asserted rights in the subject property were required to be examined and adjudicated upon in accordance with law before any competing claim for specific performance could be decreed.

27. In view of the foregoing discussion and the facts and circumstances of the case, the instant Civil Revision Application is hereby partly allowed. Consequently, the impugned judgment and decree dated 26.08.2024 and the final decree dated 06.09.2024, passed by the learned Additional District Judge-II, Shikarpur, in Civil Appeal No.33 of 2024, as well as the judgment and decree dated 16.05.2024 passed by the learned Senior Civil Judge-I, Shikarpur, are hereby set aside. The matter is remanded to the learned trial Court, i.e., Senior Civil Judge-I, Shikarpur, with a direction to conduct and conclude the trial afresh strictly in accordance with law and the following directions:

(i) The learned trial Court shall adopt the prescribed legal procedure concerning issuance and service of summons/notices upon the concerned parties. However, since the applicant, who was arrayed as defendant No.6 in the suit and respondent No.6/plaintiff have already acknowledged the pendency of the suit and participated in the proceedings, no fresh summons need be issued to them. Nevertheless, after remand, both the plaintiff and

the applicant shall remain bound to pursue the proceedings before the learned trial Court and shall appear on the dates fixed by the Court.

(ii) The defendants shall be afforded an opportunity, in accordance with law, to file their respective written statements, if not already filed, subject to the provisions of Order VIII of the Code of Civil Procedure.

(iii) Upon completion of the pleadings, the learned trial Court shall frame proper and specific issues arising from the pleadings of the parties in accordance with Order XIV of the Code of Civil Procedure. Thereafter, the parties shall be afforded an opportunity to lead their respective evidence in accordance with law.

(iv) Any miscellaneous application(s), if filed by any of the parties, shall be entertained and decided by the learned trial Court in accordance with law, after providing due opportunity of hearing to the concerned parties.

(v) After completion of the pleadings, framing of issues, and recording of evidence, the learned trial Court shall afford the parties an opportunity of hearing and thereafter decide the suit afresh on its own merits, strictly in accordance with law, without being influenced by any observation made in the earlier judgments.

(vi). It is, however, clarified that all parties shall extend full cooperation for expeditious disposal of the matter. In case any party, without lawful justification, fails to appear or otherwise avoids proceeding with the matter, the learned trial Court shall be at liberty to proceed against such party and pass appropriate orders in accordance with the provisions of the Code of Civil Procedure.

(vii). The learned trial Court shall make every endeavor to conclude the proceedings within a period of four months. No unnecessary adjournment shall be granted to either party, and any request for adjournment shall be considered strictly in accordance with law and for sufficient cause only.

28. The instant Civil Revision Application is disposed of in the above terms, with no order as to costs. These are the detailed reasons of the Short Order.

JUDGE