

*ORDER SHEET*  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

R.A. No.138 of 2012.

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DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For katcha peshi.

16.05.2018.

Mr. Abdul Hameed Bajwa, Advocate for respondents No.1 to 5.

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Mr. Aqeel Ahmed Siddiqui, holding brief on behalf of Mr. Sartar Iqbal, Advocate for the applicant, requests for adjournment on the ground that latter is unwell.

2 A review of the diary sheets suggests that since presentation of this revision, except some hearings, on all dates of hearing counsel for the applicant remained absent.

3. This revision is filed against concurrent findings of the Courts below where plaint in F.C. Suit No.12 of 2004, filed by the applicant for declaration, compensation for malicious prosecution against the respondents was rejected under Order VII Rule 11 C.P.C. by the trial Court vide its order dated 31.03.2009, which was challenged through Misc: Civil Appeal No.15/2011. Same was dismissed by the appellate Court vide order dated 29.02.2012, against which the instant revision has been filed.

4. The controversy commenced in the year 2007 where applicant filed F.C. Suit No.12 of 2007 for declaration and compensation for malicious prosecution with the following prayer:

“a. That this Honourable Court may be pleased to declare that act of defendants in filing of the suit No.78/2001 against plaintiff is illegal and without lawful authority and amounts to malicious prosecution.

b. Defendants individually and collectively to pay compensation of Rs.15 lacs to the plaintiff.

c. -----.

d. -----.”

5. The applicant in the aforementioned suit stated that he purchased plot bearing survey No.27 of Deh Shahdadpur and after converting the same into sikni got its plotting sanctioned by Director Town Planning, Hyderabad in the year 1965 and then sold out its plots to different individuals through registered sale deeds. There is also housing society in the name and style Mazhar Noor Colony on its western side abut the border line of applicant's housing scheme and the respondents while creating plots purchased the same in Mazhar Noor Colony and extended their construction beyond the area purchased by them to the enmity plots and 30 feet wide road area shown in the sketch. It was further stated that due to fear of demolition of the said illegal construction the respondents have filed Suit No.78/2001 leveling false allegations against the applicant due to which the applicant suffered heavy financial loss, mental torture and agony, thus filed the aforementioned suit for recovery of Rs.15,00,000/-.

6. Thereafter, alongwith their written statement, respondents filed an application under Order VII Rule 11 C.P.C. to reject the plaint in the above suit on the grounds that the plaint does not disclosed any cause of action; that the suit was hopelessly time barred; and, that the suit was barred by law, thus the trial Court had no jurisdiction to try the suit. Then, Muhammad Zakir, one of the legal heirs of the deceased applicant Kifayatullah, filed objections on the aforementioned application, stating that the applicant was not maintainable; that the respondents in order to prolong the matter filed the said application, and the same was liable to be dismissed.

6. After hearing the parties counsel, trial Court rejected the plaint while observing that it is the settled principle of law that while adjudicating the application under Order VII Rule 11 C.P.C. the Court has only to examine the averments of the plaint and nothing else. Perusal of the record shows that prior to fling the aforementioned suit the applicant had not issued mandatory notice to the respondents claiming any defamation, damages and mental torture on account of earlier suit No.78/2001, which was filed on a dispute

between the applicant and the respondents on a Muhag, same was a public property and not the property of the applicant or the respondents. Moreover, section 13 of Defamation Ordinance, 2002, civil Court has no jurisdiction to try the cases filed under Defamation Ordinance, 2002, against which, applicants filed an appeal being Misc. Civil Appeal No.15/2011, which was also dismissed by the appellate Court vide its order dated 29.02.2012 by observing that during pendency of the suit the original plaintiff Kifayatullah had died which fact was not rebutted by the applicant side, therefore, while relying on **1996 MLD 803** and **2006 MLD 1429**, the aforementioned appeal was not maintainable.

7. I have had an opportunity to go through the orders of the Courts below and find that the same were rendered after considering all material as well as legal aspects of the case. Both the learned Courts have passed well reasoned and conclusive orders, which need no interference in revisional jurisdiction.

8. Being cognizant of the fact that in the exercise of revisional powers, it is not the duty of the High Court to enter into the merits of the evidence as it has only to see whether the requirements of the law have been duly and properly obeyed by the court whose order is the subject of the revision, and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order. That's why if someone invokes the jurisdiction under S. 115, C.P.C. he must show not only that a jurisdictional error has been committed by the court below, but also that the interests of justice call for interference by the High Court, as the powers of the Court under S. 115 of the Code are purely discretionary, which are to be exercised in the interests of justice alone where the High Court could legitimately hold that the court below had exceeded its jurisdiction or had refrained from exercising a jurisdiction vested in it or it acted illegally or with material irregularity in the exercise of that jurisdiction, i.e. committed an error of procedure or of a mandatory procedure and that such an error had resulted in failure of justice. The words 'acted illegally' have been interpreted to mean *acting in breach of some provisions of*

*law and the words 'acting with material irregularity' are interpreted to mean committing some error of procedure and in the course of proceedings, which is material in the sense that it may have affected the ultimate decision.*

9. A review of the judgments of the Courts below shows that neither any of these Courts decided the case perversely, nor it could be said that they acted illegally or with material irregularity in the exercise of their jurisdiction. Where a lower Court passes an order in exercise of its jurisdiction, the High Court is not to interfere with it in revision unless the order (being sought revision), if allowed to stand, is likely to occasion a failure of justice or cause an irreparable injury, which is not the case at hand. In the absence of any defect in the concurrent findings of both the Courts below, interference of High Court in civil revision as held by Apex Court in **2006 SCMR 50**, amounts to improper exercise of revisional jurisdiction.

10. In the given circumstances as well as in the light of the above cited judgment of the Apex Court and other judgments delivered on the same point being **2006 SCMR 1304** and **2010 CLC 528**, the instant revision preferred against the concurrent findings of the Courts below for the reasons detailed, merits no consideration and the same is accordingly dismissed.

JUDGE

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