ORDER SHEET IN THE HIGH COURT OF SINDH AT KARACHI

CP.No.S-919 of 2017.

Date Order with signature of Judge

- 1. For orders on office objection No.1 as at "A".
- 2. For hearing of main case.
- 3. For hearing of CMA No. 4708 of 2017.

18.02.2019

Ms. Kausar Anwar Siddiqui, advocate for petitioner. Mr. Abdul Qadir Laghari, advocate for respondents. Chaudhry Khalid Nawaz, Asstt. A.G. Sindh.

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Salahuddin Panhwar, J:-By order dated 30.06.2017 instant petition was

dismissed on the issue of territorial jurisdiction, such order is that:-

"Petitioner and his counsel are called absent. By order dated 14.06.2017 he was directed to satisfy this Court as to the maintainability of this petition as prima facie it appears that the matter ought to proceed under the guardian and wards Court. Respondent No.3 was also directed to be present in Court alongwith minors who should not be removed from the territorial jurisdiction of this Court. Today, respondent No.3 has produced minors in Court, however, states that she has come from Rehimyar Khan Punjab as this is her permanent residence and that matrimonial legal proceedings are proceeding in that province i.e. Punjab. Under these circumstances this Court does not have territorial jurisdiction to look in this matter since the respondent is permanent residence of Punjab and family proceeding have already been instituted before the lower Court at Rahimyar Khan (Punjab). Accordingly this petition is dismissed as not being maintainable due to lack of territorial jurisdiction."

Whereas, learned counsel for the petitioner has referred order dated 20.08.2018, which contends that:-

"This is a restoration application, the petitioner has tried her best to serve the respondents including by way of newspaper/publication stating that this matter shall be heard before this Court on 28.08.2018 under these circumstances it appears that all possible steps has been taken to notify the respondents who perhaps are avoiding to appear before this Court. Under these circumstances and in the interest of justice the <u>restoration application is allowed</u>. Re-issue notice to respondents namely Mst. Afshan Tahir

w/o Muhammad Tahir & Rao Kaleem s/o Abdul Hakim through publication that this matter has been restored and they should be present before this court on 02.10.2018."

- 2. Prima facie, by order dated 30.6.2017 the petition was dismissed on merits, being found not maintainable on count of territorial jurisdiction. It is needless to add that a final terminal (disposal) of a lis on merits results in closing all rooms upon such Court to extent of such disposed off lis except by way of 'review'. There can be no denial to proposition that no Court can take cognizance unless the barrier of 'territorial jurisdiction' and 'pecuniary jurisdiction' stands lifted by law. Both of these, shall always be the roots of every legal structure hence, I would insist, in absence of root no legal structure can sustain. In short, if the Court lacks the jurisdiction on count of 'territorial jurisdiction' or 'pecuniary jurisdiction' it shall not be advisable to the Court to proceed further else any subsequent order, determining rights of parties, shall be nothing but a nullity. This has been the reason that law always require the Courts to attend this issue as *primary duty*. Reference is made to the case of <u>Multan</u> Electric Power Company Ltd. v. Muhammad Ashiq & Ors. (PLD 2006 SC 328) wherein it is observed as:-
 - "16. It is primarily the duty of the Courts and other adjudication forums to decide lis before them in accordance with law. The Courts and other forums are not relieved of this duty on account of an act or omission of a litigant or a lawyer. Also that jurisdiction on a Tribunal or Court is conferred by law and not by consent of the parties, express or implied."
- 3. Thus, I would feel safe in saying that after dismissal of the instant petition by order dated 30.06.2017, there remained no room for filing the

'restoration application'. Restoration, I shall insist, can only be sought where the *lis* was disposed of either for non-prosecution or for non-compliance but course of **restoration** shall never be available where the *lis* was disposed of on merits, including on point of *territorial* or *pecuniary* jurisdiction(s).

4. Without prejudice to above, the perusal of the order dated 20.08.2018 shows that at such occasion the disposal of the petition on 'merits' was not brought into notice of the Court. An order passed because of some mistake of fact or law shall always be opened to be corrected/rescinded within meaning of General Clauses Act. Since, candidly, petition was dismissed by final order on merits, hence, subsequent order of restoration, being *prima facie* result of some mistake of fact, cannot be allowed to sustain nor can be sufficient to reverse the disposal of a *lis* which, otherwise, could only be done by an appellate (superior) Court. Since, I am also conscious that a petition, once lawfully disposed of on merits, cannot be disposed of again by same court, therefore, legal position compels me to conclude that order dated 20.8.2018 be deemed to have never been passed and petition shall be deemed to have been disposed of vide order 30.6.2017 for all purposes and intents. Order accordingly.

JUDGE