

## IN THE HIGH COURT OF SINDH, KARACHI

Civil Revision Application No. 249 of 2011

M/s. Pakistan Steel Mills Corporation.....*Versus*...Major (Rtd) Gulzar Husain.

### J U D G M E N T

Date of hearing : 30<sup>TH</sup> March, 2018.

Date of Judgment : 29<sup>th</sup> June, 2018.

Applicant : Mirza Sarfraz Ahmed, advocate.

Respondent : None present.

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**Kausar Sultana Hussain, J:-** This Civil Revision Application under Section 115 C.P.C. assails judgment and decree dated 12.08.2011 and 02.12.2011 respectively, passed by the learned IIIrd Additional Sessions Judge Malir, Karachi, whereby Civil Appeal No. 15 of 2009, filed by the respondent was allowed and Judgment and Decree passed in Civil Suit No. 07 of 2005 filed by applicant for recovery of Rs. 145,569/- was set aside and suit was remanded to learned trial Court with the direction to provide equal opportunity to the parties.

2. A short factual background of the case is that the respondent Major (Rtd) Gulzar Hussain approached to the applicant M/s. Pak Steel Mills Corporation and requested for a residential accommodation, therefore, on 01.03.1997, on his request a house bearing No. L-12/2, situated in Steel Town was allotted to him on payment of monthly rent, in which respondent resided up to 10.6.1998, on which date he was shifted from House No. L-12/2 to G-39/2, thereafter on 24.12.1999 respondent was retired from the service of Pakistan Army, therefore, he was requested to vacate the said house and clear outstanding rent amount with utility charges. A vacation notice was also served upon the respondent on 01.02.2000,

which followed other notices time to time dated 11.7.2000, 22.1.2001 and 23.4.2003, but respondent failed to vacate the demise premises, as well as to clear outstanding dues. On 11.4.2003 respondent vacated the house No. G-39/2 and shifted in House No. G-35/2, situated in Steel Town Karachi. On 22.8.2003 respondent was appointed as Secretary in Pakistan Steel Officers Mess (PSOM) on contract basis through its letter thereby respondent was provided free accommodation in Steel Town, but respondent failed to perform his duties satisfactorily, as such his appointment was terminated by letter dated 17.5.2004. The respondent remained in possession of said house, but failed to pay the outstanding dues, as such he made himself liable to make payment of such dues and under the law applicant is entitled to claim such dues from respondent, who is liable to pay the same to the applicant.

3. Details of outstanding dues against the respondent is as under:-

1. House Rent w.e.f. 01.9.2000 to 21.8.2003 @ 3480 per month (35 months and 21 days). Total Rs. 124,158.
2. House Rent w.e.f. 22.8.2003 to 17.5.2004 Free of rent as Sec. (PSOM) (Excluding utilities).
3. House Rent w.e.f. 18.5.2004 to 30.11.2004 @ 3480 per month (06 months and 14 days). Total Rs. 22,452.
4. Gas charges w.e.f. 01.9.2000 to 30.11.2004 @ 400 per month (51 months). Total Rs. 20,400.
5. Water charges (Newly introduced) w.e.f. 01.7.2001 to 30.11.2004 @ 80 per month (41 months). Total Rs. 3280.
6. Conservancy charges w.e.f. 01.3.1997 to 30.11.2004 @ 77 per month (92 months). Total Rs. 7084.

**Total Rs. 1,77,374/-**

Deposit of different dates through pay orders (Rs.5,247+16,558+10,000/-) Total Rs. 31,805/-

Outstanding dues up to November 30, 2004. **Rs. 1,45,569/-**

4. The applicant is entitled to claim such amount as disclosed above and is also entitled to claim such amount which is due in account of monthly rent of said house and other amenities dues i.e. gas charges, water charges, conservancy charges accrued during pendency of suit, therefore, the applicant filed Suit No. 07 of 2005 against the respondent for recovery of Rs. 1,45,569/- before the trial Court, which suit was exparte decreed with no order as to cost. The respondent after passing of exparte order filed an application on 10.11.2008 for setting aside exparte order dated 12.01.2008, but same was dismissed by an order dated 25.4.2009, against which respondent never filed any appeal as such order has attained finality. Then respondent filed a Civil Appeal No. 15 of 2009 before IIIrd Additional District Judge Malir, Karachi against judgment and decree passed in civil suit No. 07 of 2005 of the applicant/plaintiff dated 11.7.2009 and 11.8.2009 respectively to which applicant filed his objection, but the learned appellate Court after hearing the parties counsel has allowed the said civil appeal without any reason and justification by a non-speaking order, as such applicant prefer this Revision Application.

5. Notices of present Civil Revision Application No. 249 of 2011 against the respondent were issued through different modes including publication, but the respondent inspite of that did not contest this Civil Revision. I have heard the learned counsel for the applicant and also have perused the entire record with due care and caution. Per record the suit of the applicant/plaintiff for recovery of dues of Rs. 145,569/- against the respondent/defendant was decreed as exparte, owing to the reasons that the respondent/defendant after service of notice through all modes

including publication chosen to remain absent from the trial Court, therefore, having no alternative the learned trial court declared the proceedings of the applicant's suit as *ex parte* and respondent/defendant was debarred from filing his written statement, however, after 10 months suddenly he appeared before the learned trial court and moved an application dated 10.11.2008 under order 9 Rule 7 CPC with the prayer to set aside the *ex parte* order showing reason that he was not residing at the address provided by the applicant /plaintiff in the title of the plaint as G-35/2, Steel Town. On the contrary he disclosed that he was residing at the address i.e. House No. C-78, Gulshan-e-Hadeed, Phase-1, Karachi. After hearing arguments of both the side the learned trial Court has dismissed the said application of the respondent/defendant for setting aside *ex parte* order, vide order dated 25.4.2009 and accordingly decreed the suit of the respondent/defendant as prayed, vide judgment and decree dated 11.07.2009 and 11.08.2009 respectively. It is noticed that the order dated 25.04.2009 was not challenged by the respondent/defendant before any forum but after passing *ex parte* judgment and decree in favour of the applicant /plaintiff in said civil suit the respondent/defendant preferred an appeal before learned IIIrd Additional District Judge, Malir Karachi for setting aside the judgment and decree, which initially done as the learned appellate court ordered to set aside the judgment and decree of the learned trial court dated 11.7.2009 and 11.8.2009 with direction to the learned trial court to provide equal opportunities to the parties. The applicant/plaintiff through present Revision challenged the said judgment of appellate court but the respondent/defendant inspite of service of notices of the Revision Application through different modes including publication again repeated his same attitude and did not

join the proceedings of this Revision. The respondent/defendant, who took plea in his appeal that the applicant/plaintiff had sent notices of his civil suit at the address of House No. 39/2, Steel Town, while he resided at C-78, Gulshan-e-Hadeed, Phase-1, Karachi, therefore, he could not be served but when on address of C-78, Gulshan-e-Hadeed, Phase-I, Karachi notices of present Civil Revision were issued, he again did not appear before this Court although again notices of this Revision was published in daily newspaper "Express" dated 17.1.2015. While going through the endorsements of bailiff, I found two type of reports as per report dated 16.1.2012 the respondent/defendant himself received notice of this court alongwith Revision Application. In spite of receiving notice by the respondent/defendant he did not appear before the court, then notice was issued against him through S.H.O of PS Steel Town at his address, provided by him in his appeal, but it was reported by the said S.H.O that at the said address one person namely Abdullah son of Khan Muhammad was found present, claiming himself as servant of one Muhammad Iqbal and informed that the said Bungalow belong to Mohammad Iqbal and no person with the name of Gulzar Hussain/defendant is the owner of the said Bungalow. However, after repeated notices when the respondent/defendant could not be served he was tried to be served through publication. The result was again same and the respondent/defendant did not contest this Revision Application, therefore, after hearing arguments of learned counsel for the applicant/plaintiff, I am of the considered view that the respondent/defendant deliberately avoided to contest the proceedings of Civil Suit No. 07 of 2005 and after Exparte Judgment and Decree, he challenged the same before appellate court and after providing opportunity to contest the matter to the parties he again deliberately avoided the proceeding of present Revision Application,

which shows that the respondent/defendant actually avoiding payment of dues of the applicant/plaintiff as he prayed through his Civil Suit. The attitude of the respondent/defendant is actually abuse of law, which cannot be allowed, hence, I set aside the judgment and decree of the appellate court and maintain the judgment and decree passed by the learned trial court in Civil Suit No. 07 of 2005, vide judgment and decree dated 11.07.2009 and 11.08.2009 respectively.

**J U D G E**

Faheem Memon/PA