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

R.A.No. 177 of 2019

1. For hearing of CMA 1746/2019.
2. For hearing of main case.

Date of hearing: 18.01.2021.
Date of order: 18.01.2021.

Applicant present in person.
Respondent present in person.

O R D E R

ARSHAD HUSSAIN KHAN, J. Through instant Civil Revision Application, the applicant has called in question the judgment and decree dated 18.07.2019 passed by the Court of VIIIth Additional District Judge, Hyderabad in Civil Appeal No.13 of 2018 maintaining the judgment & decree dated 18.12.2017 passed by Vth Senior Civil Judge, Hyderabad whereby F.C. Suit No. 879 of 2014 filed by the respondent was decreed.

2. Briefly, the facts of the present case are that respondent / plaintiff filed a suit for recovery of Rs.2,50,000/- against the applicant / defendant, alleging therein that he is an advocate by profession and was engaged by applicant as his counsel in Suit No.04 of 2011 against the fee of Rs.50,000/- and Rs.10,000/- for its miscellaneous expenses and such offer was accepted but no agreement was reduced in writing. According to the respondent / plaintiff he was also engaged in two civil appeals bearing No.02 of 2013 and 206 of 2012 with fee of Rs.75,000/- and Rs.20,000/- for miscellaneous expenses of each appeal. It is claimed that such appeals were contested by respondent / plaintiff regularly and the applicant / defendant assured to pay the legal fee and miscellaneous expenses. It is further alleged that after disposal of above said cases, respondent / plaintiff demanded his legal fee but the defendant / applicant avoided to pay the same hence the applicant / defendant was served with a legal notice dated 22.03.2014 but he failed to reply thereof. Finding no other

alternate, the respondent / plaintiff filed the suit bearing No. F.C. No. 879 of 2014 before the Vth Senior Civil Judge Hyderabad with following prayer:-

> ***"(a) That, this Honourable Court may be pleased to award the judgment and decree of Rs.2,50,000/- in favour of plaintiff directing the defendant to pay Rs.2,50,000/-.***
>
> ***(b) Cost of the suit be saddled upon the defendant.***
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> ***(c) Any other relief which this Honourable Court deems fit and proper may be awarded to the plaintiff."***

3. Upon service, the applicant / defendant appeared before the trial court and filled the written statement whereby denied the case of respondent / plaintiff. According to him no cause of action accrued to the respondent / plaintiff to file such suit. Learned trial court after framing the issues, recorded the evidence of parties and after hearing both the parties, decreed the suit of respondent / plaintiff. Being aggrieved by the judgment and decree, the applicant / defendant preferred Civil Appeal bearing No.13 of 2018 which was dismissed vide order 18.07.2019 by the court of learned VIIIth Additional District Judge Hyderabad. The applicant has challenged both the above judgments and decrees in the present Revision Application.

4. The applicant, present in person, during his arguments while reiterating the facts has contended that the judgments impugned herein are not sustainable in law and fact both. It is contended that the learned courts below while passing the impugned judgments have failed to consider the material/evidence available on the record. It is also contended that the learned courts below have failed to apply their judicious mind.

5. Conversely, the precise stance of the respondent who also appeared in person in the case is that the judgments and decrees impugned in the case are well reasoned and that the learned courts below after taking into account the material fact and after hearing the parties have rightly passed the judgments against the applicant and as such the same do not suffer from any illegality and or irregularity. Lastly, he prayed for dismissal of the instant revision application.

6. Admittedly, the applicant through the instant revision application has challenged the concurrent findings of the fact of learned courts below. It is now well settled that within the meaning of Section 115 of the Civil Procedure Code, 1908, High Court could only interfere with concurrent findings when the case falls within exceptional clauses. Under section 115,

C.P.C. jurisdiction of High Court is limited and restricted to the cases where two courts below have misread the evidence or excluded from consideration material piece of evidence having bearing on the facts of the case. Reliance in this regard can be placed on the case of *Abdul Mateen and others v. Mst. Mustakhia* [2006 SCMR 50], wherein the Hon'ble Supreme Court, inter ala, has held as under:-

> ".....There is no cavil to the proposition that the concurrent finding on a question of fact or mixed question of law and facts, if is found suffering from misreading or non-reading of evidence or based on no evidence or inadmissible evidence, the High Court in exercise of the revisional jurisdiction should correct the error committed by the subordinate Courts but in absence of any defect of misreading or non-reading of evidence in the concurrent finding of two Courts on such question, the interference of the High Court in the civil revision would amount to improper exercise of revisional jurisdiction. This is settled law that re-examination and reappraisal of evidence is not permissible in revisional jurisdiction even if conclusion drawn by the subordinate Courts on a question of fact was erroneous. The revisional power of High Court is exercised for correcting an error committed by the subordinate Courts in exercise of their jurisdiction and mere erroneous decision would not call for interference unless it is established that the decision was based on no evidence or the evidence relied upon was inadmissible or the decision was perverse so as to cause grave injustice. This is settled law that the High Court in revisional jurisdiction cannot upset the concurrent findings of fact by means of re-examination of evidence and in the present case, the perusal of record would not show any misreading or non-reading of evidence brought on the record by the parties or suggest that the Court of first instance and the Appellate Court had drawn wrong conclusion from the evidence calling for interference of the High Court in its revisional jurisdiction."

7. The provisions of section 115, C.P.C. envisage interference by the High Court only on account of jurisdiction alone, i.e. if a court subordinate to the High Court has exercised a jurisdiction not vested in it, or has irregularly exercised a jurisdiction vested in it or has not exercised such jurisdiction so vested in it. It is settled law that when a court has jurisdiction to decide a question it has jurisdiction to decide it rightly or wrongly both in fact and law. The mere fact that its decision is erroneous in law does not amount to illegal or irregular exercise of jurisdiction. For an applicant to succeed under section 115, C.P.C., he has to show that there is some material defect or procedure or disregard of some rule of law in the manner of reaching that wrong decision. In other words, there must be some distinction between jurisdiction to try and determine a matter and erroneous action of a court in exercise of such jurisdiction.

8. From perusal of the impugned judgments, it appears that learned courts below, after hearing the counsel for the parties and taking into account the

material facts as well as law on the point, have passed speaking orders. For the sake of ready reference relevant portions of both the impugned judgments passed by trial court as well as appellate court are reproduced as under:

Relevant portion of the judgment dated 18.12.2017 passed by the Trial Court

> "On the other hand, plaintiff has produced certified true copies of judgment dated 30.10.2013 of civil appeal No.02 of 2013 and civil appeal No.206 of 2012, so also the judgment dated 01.12.2012 passed in F.C. Suit No.04 of 2011 alongwith their respective decrees as Exs.41/A to 41/F respectively. Perusals of such judgments show the name of plaintiff to have been representing the defendant and contesting the same all along on his behalf being attorney of his son, the original party. There is nothing in the judgments that he had not proceeded with the matters in question as claimed by the defendant. Thus, these words of the defendant are not borne out from the record. Rather, the claim of plaintiff is sufficiently established that not only he was engaged, but also proceeded with the suit and the appeals; therefore, the plaintiff would be entitled to recover the professional fees from the defendant in respect of both appeals. So also, the defendant has not been able to prove that fee of Rs.3000/- was duly paid by him in respect of the suit also. Thus, the defendant is also liable to pay professional fees of plaintiff in respect of suit. Since, apparently both sides were not able to prove their respective contentions in respect of the settlement of professional fees among them, though in view of the admitted evidence, the plaintiff was admittedly engaged and it stood established that his professional fees were not paid to him; therefore, a reasonable fair rate of professional fees is to be drawn respecting entitlement of the plaintiff to recover his professional fees from the defendant. Thus during course of arguments, the counsel for the defendant was enquired as to settlement of his fee with the defendant in respect of the present matter so as to draw a fair rate of the professional fees. He replied that he has settled the professional fees of Rs.15,000/- with Rs.5000/- extra as miscellaneous expenses, totaling to Rs.20,000/-, judicial notice whereof is thus taken. Accordingly, the defendant is thus held to be liable to pay the said amount for the purpose of FC Suit No.04 of 2011 and Rs.25,000/- for each appeal including miscellaneous expenses and in this manner, the plaintiff is found to be entitled to recover a total amount of Rs.70,000/- from the defendant, which the defendant is liable to pay the same. Both these issues are replied accordingly in affirmative."

Relevant portion of the judgment dated 18.07.2019 passed by Appellate Court

> "8. I have considered the submissions of both the learned advocates and gone through the relevant record. The following points are framed for determination.
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> 1. Whether the impugned Judgment and Decree require any interference?
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> 2. What should the judgment be?
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> 9. My findings on above points are as under:-
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> POINT NO.1……IN NEGATIVE.
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> POINT NO.2……APPEAL DISMISSED.
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> POINT NO.1
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> 10. The engagement of respondent in suit and appeals as an advocate by the

appellant is admitted. So far the fixation of professional fee is concerned both the parties have failed to prove their own version in respect of fixation of professional fee. It is also admitted position that it has been established that appellant had not paid professional fees to the respondent. The perusal of impugned Judgment and Decree reveal that the learned trial Court has rightly observed the respondent to be entitled for recovery of Rs,70,000/- from appellant for engaging him as an advocate in suit and appeal. In the circumstances I see no reason to interfere in the impugned Judgment and Decree. The point No.1 is answered in Negative."

9. The upshot of the above discussion is that there is no illegality or irregularity and infirmity in the concurrent findings of both the learned courts below. The applicant has also failed to point out any error or any illegality, infirmity or jurisdiction error in the impugned orders, which could warrant interference by this court in exercise of its revisional jurisdiction. Consequently, the revision application in hand, being devoid any force and merit, is dismissed alongwith pending application.

JUDGE

Tufail