IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision Application No. S-65 of 2018

Applicant	:	Munwar Ali [Present in person]
Respondents No.1&3	:	SEPCO through Chief Executive, Sukkur and others. Through Mr. Abid Hussain Qadri.
Respondents No.2&4	:	Nemo.
Respondent No.5	:	Federation of Pakistan, through Mr. Abdul Reham Abro, Assitant Attorney General.
Date of hearing	:	05.09.2019.
Date of order	:	05.09.2019.

JUDGMENT

ARSHAD HUSSAIN KHAN, J. Through instant Civil Revision Application, the applicant has called in question the judgment & decree dated: 10.02.2018 & 13.02.2018 respectively, passed by the learned 3rd Senior Civil Judge, Larkana, in F.C Suit No.39 of 2015 (Old No. 154 of 2014) dismissing the Suit of the Applicant; and judgment and decree dated 11.09.2018, passed by the Court of IV-Additional District Judge, Larkana, in Civil Appeal No.11 of 2018, whereby the Appeal of Applicant/plaintiff was allowed only to the extent of prayer clause "B" of the Suit.

2. Briefly the facts of the present case are that the Applicant/plaintiff Munawar Ali Abbasi, a practicing advocate having membership of High Court Bar Association, Larkana, is the owner of property situated at Saddique Colony, Main Naudero Road, Larkana (subject premises) and consumer of respondent/SEPCO having domestic as well as commercial electricity meters bearing # A-1 (00572880) & A-2 (00572648) respectively. In the month of August 2008, due to heavy rain the domestic meter installed at the subject premises was burned out, resultantly the supply of electricity was disconnected. The said incident, though was immediately brought into the notice of Respondent/SEPCO yet they had failed to change the said meter and restore the electricity. Consequently, the applicant sent legal notice upon which he received accumulated and excessive bills in respect of commercial connection without suppling the electricity. Faced with such situation, the applicant filed a constitutional petition bearing No. C.P. D-93 of 2010 before this Court which was

disposed of on 15.05.2013 with the directions to the respondent/SEPCO to entertain the application of the applicant and decide the same within 30 days' time and further to restore the electricity of the applicant within seven (7) days' time. Respondent/SEPCO failed to comply with the directions of this Court resulting which the applicant filed contempt of Court application in the said Constitutional Petition, which was disposed of on 30.10.2014. Subsequently, the Applicant filed civil proceedings bearing F.C Suit No.39 of 2015 (old No.154/2014), *inter alia*, against the Respondent/SEPCO through Chief Executive Sukkur, in the Court of Senior Civil Judge-III, Larkana, for Declaration, Settlement of Accounts and Damages to the tune of Rs.500,000/-.

3. After service, the Respondent/SEPCO filed written statement wherein it was admitted that the Applicant is a consumer of SEPCO and using electricity at his house as well as at the shops located in the same building, they, however, denied the allegations as well as the case of Applicant as setup in the plaint and prayed for dismissal of the suit. From the pleadings of parties, learned trial court framed the issues and subsequently Applicant led his evidence and PWs were cross-examined by the counsel for the Respondent/SEPCO. Whereas Respondent/SEPCO did not lead any evidence. Consequently, the evidence was closed. After hearing the arguments, learned trial Court dismissed the suit of Applicant/plaintiff vide judgment dated 10.02.2018 and decree dated 13.02.2018. The Applicant/plaintiff being aggrieved by the said judgment and decree preferred appeal before the District Judge, Larkana, which was ultimately decided by the learned IV-Additional District Judge, Larkana, vide his judgment dated 11.09.2018. The Applicant after having been aggrieved by the aforesaid judgment challenged the same in the present civil revision application.

4. The Applicant, appearing in person, during his arguments, while reiterating the facts, has contended that orders impugned herein are not sustainable in law and fact both. It is contended that the learned Courts below while passing the impugned orders have failed to consider the material fact that respondent, despite the orders of this Court passed in CP No. 93 of 2010, has failed to restore electricity connection and instead issued highly exaggerated electricity bills on the basis of excessive units which the Applicant never consumed. It is further

contended that the learned Courts below have also failed to consider the adamant and arbitrary conduct of Respondent/SEPCO which not only disgraced and lowered the social position of the Applicant and caused loss to the business but also caused humiliation and continues mental torture and agony for which the Respondent/SEPCO is liable to pay damages to the tune of Rs.500,000/- jointly and severely. It is also contended that learned Courts below while passing the impugned orders have failed to consider the evidence available on the record which fully support the stance of the Applicant. The Applicant in support of his stance has relied upon the cases of WAPDA v. AMIN ICE FACTORY (2001 MLD 1287), MUHAMMAD ABID v. Mst. NASREEN YOUSUF and another (SBLR 2004 Sindh 1049), FARRUKH SAEED KHAN v. ANIS-UR-REHMAN BHATTI (SBLR 2006 SINDH 231) And PATTOKI ICE FACTORY v. REVENUE OFFICER and others (1996 CLC 1636).

5. Conversely, learned Counsel for the SEPCO while supporting the judgment impugned has contended that though the judgment and decree passed by the learned trial Court was based on the material and the evidence available on the record yet the learned lower appellate Court reversed the findings of learned trial Court and decreed the suit of the Applicant to the extent of prayer clause B. He further contended that the Respondent/SEPCO accepted the judgment of the learned lower appellate Court and ready to comply with the directions passed in the said judgment. Learned counsel for Respondent/SEPCO, in response to arguments of the Applicant with regard to non-compliance of this Court order, submits that the SEPCO never flouted the orders of this Court. He further submits that the SEPCO, in compliance of this Court’s order, restored the electricity connection, however, the Applicant failed to pay the electricity charges as per the consumption of energy. Learned counsel also argued that the Applicant did not lead any evidence in respect of alleged damages, hence the question of liability of the said payment by the respondents does not arise. Lastly, he argued that the present revision application is liable to be dismissed.

6. On the other hand, learned Assistant Attorney General, while adopting the arguments of learned counsel for Respondent/SEPCO,

supported the impugned judgments and also prayed for dismissal of present revision application.

7. I have heard the arguments of learned counsel for the parties and with their assistance have perused the material available on the record as well as the case law cited at the Bar.

8. It is well settled law that revision is a matter between the higher and subordinate Courts, and the right to move an application in this respect by the Applicant, is merely a privilege. The provisions of Section 115, C.P.C., have been divided into two parts; first part enumerates the conditions, under which the Court can interfere and the second part specify the type of orders which are susceptible to revision. In numerous judgments, the apex Court was pleased to hold that the jurisdictions under section 115, C.P.C., are discretionary in nature, but it does not imply that it is not a right and only privilege, therefore, the Court may not arbitrarily refuse to exercise its discretionary powers, rather, to act according to law and the principles enunciated by the superior Courts. The legislature in their wisdom have couched section 115, C.P.C., in the following language:-

> **"S.115. Revision**:---(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears...
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> (a) to have exercised a jurisdiction not vested in it by law, or
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> (b) to have failed to exercise a jurisdiction so vested, or
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> (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,"
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> the High Court may make such order in the case as it thinks fit.
>
> [Provided that, where a person makes an application under sub-section he shall, in support of such application, furnish copies of the pleading, documents and order of the subordinate Court. and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court.]

9. From the bare reading of the above section, it is manifest that on entertaining a revision petition, the High Court exercises its supervisory jurisdiction to satisfy itself as to whether the jurisdiction by the Courts below has been exercised properly and whether the proceedings of the

subordinate Court do suffer or not from any illegality or irregularity. Reference may be placed in the case of *Muhammad Sadiq v. Mst. Bashiran and 9 others* ***(PLD 2000 SC 820).***

10. From the perusal of record, it appears that the Applicant/plaintiff is a consumer of Respondent/SEPCO having domestic as well as commercial electricity meters installed at his premises. In the month of August 2008, due to heavy rain the domestic meter installed at the subject premises was burned out, resultantly the supply of electricity was disconnected. The said incident, though was immediately brought into the notice of respondent/SEPCO yet they had failed to change the said meter and restore the electricity. Consequently, the Applicant filed a constitutional petition bearing No. C.P. D-93 of 2010 before this court which was disposed of on 15.05.2013 with the direction to the respondent-SEPCO to entertain the application of the Applicant and decide the same within 30 days' time and further to restore the electricity of the Applicant within seven (7) days' time. Respondent SEPCO failed to comply with the directions of this Court resulting which the Applicant filed a contempt of Court application in the said Constitutional Petition, which was disposed of on 30.10.2014. Subsequently, the Applicant filed civil proceedings bearing F.C Suit No.39 of 2015, *inter alia*, against the Respondent/SEPCO through Chief Executive Sukkur, in the Court of Senior Civil Judge-III, Larkana, for Declaration, Settlement of Accounts and Damages to the tune of Rs.500,000/-with the following prayers:-

> a) Declare that act and conduct of the defendants is aggressive, arbitrary, unlawful and based on abuse of their official authority beyond their prerogative.
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> b) Declare that reading in domestic as well as commercial meters A-1 (00572880) & A-2 (00572648) respectively, beyond the dial reading and in absence of supply of electricity is unlawful, arbitrary, capricious and against the spirit of Electricity Act and liable to be waived off/written off.
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> c) Direct the defendants to settle both the accounts of domestic Meter A-1(00572880) and Commercial Meter A-2 (00572468), both these meters stand removed on the dial reading of 3677 and 10634 respectively, thus amount charged beyond the dial reading is liable to be waived off.
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> d) Pass judgment and decree in the sum of Rs.500,000/- as damages/compensation on account of loss suffered by the plaintiff to his business and for

the deliberate, mental torture, worries, agony to the plaintiff.

e) Grant any other adequate and appropriate relief as deemed fit in the circumstances of the case.

f) Grant cost of the suit.

11. Respondent/SEPCO filed written statement wherein it was admitted that the Applicant is a consumer of SEPCO and using electricity at his house as well as at the shops located in the same building, they however, denied the allegations as well as the case of Applicant as setup in the plaint and prayed for dismissal of the suit. From the pleadings of parties, learned trial court framed the following issues:

1. Whether the suit of the plaintiff is maintainable?
2. Whether reading in plaintiff's both meters viz. domestic Meter No. 00572880 and commercial Meter No. 0057268 are beyond the dial reading and in absence of the supply is unlawful and against the spril of Electricity Act and liable to be waived?
3. Whether the defendants redressed the grievances of the plaintiff as order passed on 14.05.2013 by Honourable High Court of Sindh, Circuit Larkana in CP No. D-93 of 2010?
4. Whether the plaintiff is entitled for the relief claimed?
5. What should the decree be?

12. Subsequently, the Applicant led his evidence and PWs were cross-examined by the counsel for Respondent/SEPCO, whereas Respondent/SEPCO did not lead any evidence. Consequently, the evidence was closed and after hearing the arguments, learned trial Court dismissed the suit of Applicant/plaintiff vide judgment dated 10.02.2018 and decree dated 13.02.2018. For the sake of ready reference, relevant portion of the said judgment, wherein the learned trial Court has given reasons to the findings on the issue No.2, is reproduced as under:

> "In his cross examination he has deposed that it is fact that his construction is made at first floor where two shops and one house is constructed, He also admitted the fact that electricity is installed at his first floor. He admitted the fact that in each shop there are capacity of two celling fan and four bulbs. He also admitted that at ground floor there is one room with one hall, wash room and kitchen, motor machine, one ceiling fan and four bulbs. He admitted the fact that he got two new connections one for commercial and other domestic, He also admitted the fact that first floor of his house is rented out by him and there is no legal connection at his house and his tenants are using electricity supply directly. He also admitted the fact that he is using electricity for his shop only and shopkeeper viz, tenant is using electricity directly without meter, He also admitted the fact that he has

not produced any proof in shifting from village Kenhar to Karachi. He has admitted the fact that he has not attached application submitted by him to the office of HESCO in respect of correction of his bill. He also admitted the fact that he has not submitted application to electrical inspector under section 26 (b) of Electricity Act in respect of his burnt meter, He also admitted the fact that he has not paid disputed amount since 2009.

Perusal of record reveals that plaintiff has deposed that he has two shops on the front face of road which are being used by him. In his two shops there is commercial meter while in his third shop there is domestic meter such contention of the plaintiff amounts to admission that there are two electricity meters in his name issued for his two commercial shops and one shop which is used by him at house but in his cross examination he has given counter versions that this first floor is given on rent by him and the tenants of house are using electricity directly without meter and his tenants of two shops are also using electricity without meter. It is admitted position that plaintiff is earning his income out of his two commercial shops and one domestic shop but same shop are running without legal connection for electricity. The plaintiff is support of his prayer has produced a copy of electricity bills at Ex.33/C and 33/D. in his both bills at above exhibits produced by the plaintiff shows that plaintiff has not made payment as per consumption of electricity, it is version of the plaintiff that during heavy rain his meter went burnt in the year 2008 but face of record in terms of the electricity bills reveals that plaintiff is defaulter in respect of amount of electricity bills since the year 1999. Plaintiff in respect of his prayer has produced a copy of complaint made by him to Wafaqi Mohitsab but he has produced photo copy of Complaint. Plaintiff has also produced photo copy of application made by him to SDO Sub-Division Empire at Ex.33/B and this photo copy does not bear the office stamp of SDO Empire. Plaintiff has produced a copy of legal notice at Ex.33/E but this document in the name of legal notice does not reveals any receiving at the hands of defendants so it is Sounds like it has not been sent by plaintiff neither received by the defendants. Plaintiff has also produced copy of second legal notice at Ex.33/F but this copy of legal notice also does not reveals receiving at the hands of defendants. It is also admitted position that plaintiff has not approached to electrical inspector in respect of his grievance against the defendants. Whereas 'electricity law is very much clear in this regard, that first remedy in terms of grievance in respect of alleged illegal bills is before electrical inspector. It means that plaintiff did not exhaust his first remedy and directly approached to the court. It is settled principle of law that documents must be produced but in original and not photo copy if any photo copy is produced then photo copy bears no consideration as per law of Qanun-e-Shahadat order 1984. The record produced by the plaintiff is very much clear that plaintiff is defaulter in terms of payment of electricity bills and so also is taking illegal income out of shops and one house being given on rent, which means that plaintiff is also involved in electricity theft. It is also settled principle of law that plaintiff has to win his case under strength of his own case but on the weakness of defendants. In present case in hand, it has proved that plaintiff is defaulter so also, involved in electricity theft which brings fact on record that plaintiff has approach to this court with unclean hands out of discussion, it has proved that plaintiff badly failed to prove his case. Hence this issue is answered in negative.”

13. The Applicant/plaintiff being aggrieved by said judgment and decree preferred appeal before District Judge, Larkana, which was ultimately decided by the learned IV-Additional District Judge, Larkana vide his judgment dated 11.09.2018 in the following terms:-

> "In view of above, I am not satisfied with the observations of learned trial Judge regarding committing theft of electricity by the appellant, as respondents/ defendants nave not issued any letter to the appellant that he has committed theft of electricity. The learned trial Court observed that appellant rented out his first floor and shops to the tenants and they were using the electricity directly from the poll but appellant is not accountable for the act of tenants for using electricity directly and even respondents/defendants have not issued any notice to the tenants or appellants in this regard. Since it is proved that respondents/ defendants have issued excess bill to the appellant without justification from August 2009: therefore. respondents/defendants are directed to inspect the premises of appellant to check out the meters installed at premises and issue correct bills according to the reading of the meters and if any illegality or irregularity seems to be committed then issue notice to the appellant according to law. Consequently, the prayer clause "B" of suit is allowed and appeal in hand stands allowed in above terms."

The applicant having been aggrieved by the aforesaid order challenged the same in the present civil revision application.

14. The main argument of the Applicant/plaintiff was that the learned trial court as well as lower appellate courts have failed to consider the material fact that the Respondent/SEPCO did not lead any evidence in support of its stance in the case and as such the stance of the Applicant has gone un-rebutted and the Applicant is entitled to reliefs as claimed in the suit including the damages. It is well settled law that the plaintiff has to prove and establish his case on the strength of his own evidence and he cannot get any benefit from the shortcomings and weakness of the case of the defendant. Moreover, from the perusal of the plaint of the suit, it reflects that the nature of the damages claimed by the Plaintiff in the instant case falls within the ambit of general damages, which is required to be established through a cogent and reliable evidence mere feeling of resentment in one's mind is not sufficient to establish general damages. And if a person claims mental torture/agony or damage/injury, initial burden would lie upon him to lead evidence on such point. Furthermore, determining the general damages for mental torture, agony, defamation and financial losses, they are to be assessed following the "rule of thumb" and the

said exercise falls in the discretionary jurisdiction of the Court, which has to be decided in the facts and circumstances of each case. Reliance in this regard can be placed upon cases of *MURTAZA ALI v. SABIR ALI BANGASH* **[2015 YLR 1239],** *Mst. NAGINA BEGUM v. Mst. TAHZIM AKHTAR and others* **[2009 SCMR 623],** *Messrs KLB-E-HYDER AND COMPANY [PVT.] LTD., through Chief Executive v. NATIONAL BANK OF PAKISTAN through President and 3 others* **[2008 CLD 576] &** *CHIEF OFFICER, DISTRICT COUNCIL, SHEIKHPURA and 2 others v. Haji SULTAN SAFDAR and 2 others* **[1999 YLR 1963].** *GOVERNMENT OF KHYBER PAKHTUNKHWA and others v. Syed JAFFAR SHAH* **(2016 MLD 223)** and *MUBASHIR AHMAD v. Syed MUHAMMAD SHAH through Legal Heirs* **(2011 SCMR 1009)**, *Dr. M. RAZA ZAIDI v. GLAXO WELLCOME PAKISTAN LIMITED, KARACHI* **[2018 MLD 1268] &** *CHAIRMAN, MARI GAS CO. LTD. and 2 others v. ABDUL REHMAN* **[2017 YLR 2505].**

There is nothing available on record which could show that the Applicant/plaintiff has led any evidence to establish his case in respect of damages as such he is not entitled to claim such relief as a right.

15. 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 on fact and law. 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. It is a settled principle of law that erroneous conclusions of law or fact can be corrected in appeals and not by way of a revision which primarily deals with the question of jurisdiction of a Court i.e. whether a Court has exercised a jurisdiction not vested in it or has not exercised a jurisdiction vested in it or has exercised a

jurisdiction vested in it illegally or with material irregularity.

16. No such infirmity has been shown by the Applicant to call for interference in the impugned judgment by this Court. The case-law relied upon has not been discussed as it was not relevant for the purposes of deciding this revision.

17. Moreover, in the case of *Mir Muhammad alias Miral v. Ghulam Muhammad* **(PLD 1996 Kar. 202)**, it was held that, "It is settled proposition of law that in the event of conflict of judgment, view expressed by the appellate Court should ordinarily be preferred unless the same is contrary to evidence on record or in violation of the settled principles for administration of justice." In the present case, the Applicant has failed to show that the findings of fact arrived at by the learned appellate Court are contrary to the evidence on record or in violation of settled principles of law.

18. In the case of *AASA v. Ibrahim (***2000 CLC 500)**, learned single Judge of the Quetta High Court held that, "If no error of law or defect in procedure had been committed in coming to a finding of fact, the High Court cannot substitute such finding merely because a different finding could be given.

19. The upshot of the above discussion is that no illegality, irregularity or jurisdictional error, in the findings of the learned lower Courts, which resulted into the impugned judgment and decree, could have been pointed out by the Applicant. Resultantly, the Civil Revision in hand being devoid of any force and merit is liable to be dismissed.

Foregoing are the reasons for my short order dated 05.09.2019, whereby this Civil Revision was dismissed.

JUDGE