

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

R.A. No. 14 of 2015

Applicant: Mansoor Ali through Mr. Aqeel Ahmed Siddiqui, Advocate.

Respondent: Executive District Officer (Health) through Mr. Wali Muhammad Jamari, Asst: Advocate General.

Date of hearing: 04.11.2019

Date of decision: 18.11.2019

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through this Revision Application, the applicant has called in question the judgment and decree dated 18.12.2014 passed by learned Additional District Judge, Hyderabad in C.A. No. 81 of 2014 whereby the learned Judge dismissed the appeal of the appellant while setting aside the judgment and decree dated 22.9.2014 passed by learned IVth Senior Civil Judge, Hyderabad in F.C. Suit No. 431 of 2013 decreeing the suit of the applicant to extent of prayer clause 'B' and 'C'.

2. Case of the applicant is that he is running business in the name of and style of "M/s Al-Habib Enterprises Hyderabad", which is a registered firm. The applicant used to supply and purchase the medicines and other surgical instruments; on 20.05.2013, he received a notice dated 29.05.2013 under Section 160 Cr.P.C from Anti-Corruption Department Hyderabad regarding supplying of fake and adulterated medicines, drugs and other surgical instrument by his firm. However, the contents of notice were vehemently denied by him and later on he found that all the documents i.e. cheques, pro-note or any pay order are fake and manipulated documents; that on account of the above acts of respondent, he suffered great loss, torture and harassment, therefore, he claimed compensation and damages to the tune of Rupees two crores. The applicant served a legal notice upon the respondent on 25.05.2013 which was not replied, hence he sent last and final notice on 04.06.2013, which too was not replied; therefore, he filed Suit No.431 of 2013 for

declaration, damages, permanent and mandatory Injunction in the Court of IV-Senior Civil Judge Hyderabad against Executive Officer Health Department, Tando Allahyar. In order to prove the case, the applicant filed his affidavit-in-evidence and his witnesses and produced certain document(s); however, they were not cross examined as the respondent did not turn up to defend the case. While reiterating his pleadings, learned counsel for the applicant has argued that it is proved that the applicant suffered mental torture and loss to his business, hence is fully entitled for the relief as prayed.

3. Having heard learned counsel for the applicant/plaintiff, learned trial Court announced ex-parte judgment in favour of the applicant to the extent of prayer clause 'B' and 'C'. Both the parties being aggrieved by and dissatisfied with the impugned judgment and decree filed Appeals bearing Nos.81 & 82 of 2014. However, after hearing both the parties, learned appellate Court dismissed both the aforesaid appeals against which the applicant has preferred the instant revision application.

4. Mr. Aqeel Ahmed Siddiqui, learned Counsel for the Applicant has mainly contended that the judgments of both the Courts below are contrary to law and facts; that the judgments of both the courts below are full of errors and based upon misreading and non-reading of evidence; that learned trial Court did not consider that once affidavit-in-evidence of the applicant and his witnesses were submitted and the contention urged in the affidavit-in-evidence remained unchallenged then learned trial Court ought to have decreed the suit as prayed and not partially; that learned Appellate Court failed to consider the grounds taken by the applicant in the memo of Appeal and also failed to appreciate that the very suit of the applicant for damages was also maintainable before the learned trial Court who only decreed the suit to the extent of prayer clause "B" and "C" and neglected to grant the damages suffered by the applicant on account of loss to his reputation and business though the applicant has proved his case through cogent evidence; therefore, both the Judgments are liable to be set aside. He lastly prayed for allowing the instant Revision Application.

5. Conversely, Mr. Wali Muhammad Jamari, Assistant Advocate General has supported the judgment of Appellate Court in Appeal

No.81 of 2014 by contending that basic suit of the applicant was not maintainable under the law; that learned trial Court wrongly decreed the suit to the extent of prayer clause 'B' and 'C', that the suit ought to have been dismissed on the ground that he sued the respondents in personal capacity, and not through Secretary, Government of Sindh, as provided under Section 79 of CPC, however the appellate Court corrected the wrong by dismissing the appeal of the applicant on merit. He prayed for dismissal of the captioned revision application.

6. I have heard learned counsel for the parties at considerable length and also reviewed the record available before me.

7. Perusal of record explicitly shows that the applicant/plaintiff claimed compensation against the respondent on account of mental torture and loss to his business. In order to evaluate, at this stage, it is to be noted that there are two types of damages namely; 'special damages' and 'general damages'. The term 'general damages' refers to the special character, condition or circumstances which accrue from the immediate, direct and approximate result of the wrong complained of. Similarly, the term 'special damages' is defined as the actual but not necessarily the result of injury complained. It follows as a natural and approximate consequence in a particular case, by reason of special circumstances or condition. The principle is, therefore, well settled that damages are intended to put a person in the same position as he would have been in, had he not received the injury. In the instant case, the applicant/plaintiff has utterly failed to substantiate his claim for damages as he failed to produce any document showing that he incurred any amount on his medical treatment as alleged in the memo of plaint; or any loss was caused to his business.

8. The findings of learned trial Court are based on the analogy that Respondent despite having been duly served did not appear in Court and was debarred from filing written statement that's why there was no reason to disbelieve applicant's/plaintiff's averments as contained in plaint, existed and decreed the Suit of the applicant's/plaintiff to the extent of prayer clause 'B' and 'C' in my view this is hardly a ground to decree the suit partly, learned trial Court ought to have seen that there are various factors to be taken into consideration then the suit is to be decreed if the party proves

the case of damages on account of suffering of applicant as discussed in the preceding paragraph. Merely by filing an affidavit in evidence does not mean that the applicant/plaintiff has proved his case for damages.

9. In my view, there can be no denial that a 'wrongful' act may result in causing mental loss and damages but one, *in law*, cannot succeed for such relief by uttering words 'mental loss or damages' but one shall be required not only to plead *specifically* every fact, constituting claimed loss / damage under *each* head but also to prove the same by leading evidence, as per *required* standards. The applicant (*plaintiff*) neither gave details of mental suffering / damage and loss to business even did not attempt to produce a single document to establish mental suffering or other special damages therefore, without much debate, the matter under discussion shall conclude in no other answer but negative.

10. In view of the foregoing discussion, the instant revision application is found to be meritless, which is hereby dismissed with no order as to costs.

JUDGE

Fahad Memon