

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

C.P No.D-254 of 2021

**BEFORE: Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry**

Petitioner : *Through Zafar Iqbal Seenharo,
Advocate.*

Respondent No.5 : *Through Muhammad Aslam P. Sipio,
Advocate.*

Respondent : *Through Mr. Allah Bachayo Soomro,
Addl. Advocate General Sindh.*

*Date of Hearing
& Decision* : *24.11.2021*

O R D E R

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioner has impugned the order dated 25.01.2021 passed by the learned Addl. District Judge / MCAC, Hala in Civil Revision No.11 of 2020, whereby the order dated 24.10.2020 passed by learned Senior Civil Judge Hala in F.C Suit No.67 of 2017 was set-aside.

2- Learned counsel for the petitioner states at the bar that the plaintiff/respondent No.5 through his statement dated 22.11.2017 withdrew his F.C Suit No.67 of 2017 which was dismissed as withdrawn unconditionally under Order XXIII Rule 1 CPC. After the lapse of more than two (02) years, he moved an application under Section 151 CPC for recalling the said order, and such application was dismissed vide order dated 24.10.2020. Thereafter, the respondent No.5 challenged the said order in revision application before the learned Addl. District Judge, which was allowed to restore the suit. The petitioner being aggrieved by and dissatisfied with the impugned order dated 25.01.2021 has filed the instant petition.

3- We have gone through the statement dated 22.11.2017 filed by respondent No.5 before the learned Senior Civil Judge, Hala in F.C Suit No.67 of 2017 whereby he sought withdrawal of the aforesaid suit on the premise that they have settled the dispute outside the Court on the intervention of nekwards and the attorney of defendant No.5 namely Amir Bux who issued the cheques for the part payment

receipt. The learned trial Court vide order dated 22.11.2017 passed the following order:-

“In view of above reasons and no objection of other side, the suit of plaintiff stands dismissed as withdrawn. There will be no order as to costs. However, all other pending applications are also disposed of being infructuous.

4- Surprisingly, the learned counsel for the plaintiff/respondent No.5 moved an application under Section 151 CPC in the year 2020 for restoration of the suit on the premise that he withdrew the suit on account of the promise of payment of the double amount as admitted by the defendant No.5 but he failed; therefore, the instant suit is liable to be restored to its original position. The matter was contested and finally, the learned trial Court vide order dated 24.10.2020 dismissed the application under Section 151 CPC on the ground that the relief claimed by the plaintiff does not come within the ambit of Section 151 CPC.

5- The plaintiff/respondent No.5 being aggrieved by and dissatisfied with the aforesaid decision filed Civil Revision Application No.11 of 2020 before the learned Addl. District Judge, Hala which was allowed, and the order dated 24.10.2020 was set-aside with the following observations:

“Since the both parties are under the chain of litigation since long, since the case law discussed supra are very identical to the facts of present matter, hence under the provision of Civil Procedure Code viz. Section 151 CPC the Court have inherent powers, resultantly in order to give peaceful atmosphere to both the parties, I find substance in present civil revision and there is need to interference with impugned order dated 24.10.2020, hence stands set-aside the Civil Revision in hand stands allowed”.

6- At this stage, we confronted the learned counsel for respondent No.5 as to how a suit withdrawn unconditionally could be restored to its original position, after the lapse of more than two (02) years, on the application filed under Section 151 CPC. Learned counsel submits that the suit was withdrawn on out-of-Court settlement, and when the terms of settlement were not fulfilled by the petitioner, the respondent No.5 moved for resurrecting the suit. In our view, if there was breach of any out-of-Court settlement, that could be a fresh cause of action for a fresh suit, but was no cause for restoring a suit withdrawn unconditionally.

7- In view of the above legal position, both the learned counsel agreed for disposal of this petition in the terms that the impugned order dated 25.01.2021 is set-aside with the observation that respondent No.5 shall be at liberty to file a fresh suit on the alleged breach of out-of-Court settlement agreement between the parties which shall be subject to all just legal exceptions as provided under the law.

8- This petition stands disposed of along with the pending application(s) in the above terms with no order as to costs.

JUDGE

JUDGE

Hafiz Fahad