

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 58 of 2002

Province of Sindh & others.....Applicants

Versus

Syed Muhammad Iqbal & others.....Respondents

Date of Hearing: 14-02-2022

Date of Judgment: 14-02-2022

Mr. Ahmed Ali Shahani, Assistant A.G-Sindh for the Applicants.

Mr. Kamran Mobeen Khan, Associate of Mr. A.M. Mobeen Khan, Advocate for the Respondents.

J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicants have impugned Judgment dated 06.03.2002, passed by the 2nd Additional District Judge, Khairpur in Civil Appeal No.21 of 2000 (**The Sub Divisional Officer Irrigation and others v. Syed Muhammad Iqal and others**), through which Order dated 22.05.2000, passed by the Senior Civil Judge, Mirwah, dismissing an Application under Order 9 Rule 13 CPC has been maintained.

2. Heard learned Assistant A.G and perused the record.

3. It appears that the Suit filed by the Respondents was decreed vide Judgment dated 27.02.1997, which was not impugned any further and when execution proceedings were initiated, the Applicants filed an Application under Order 9 Rule 13 CPC for recalling of the Judgment and Decree on the ground that it was an *ex parte* decree; whereas, proper evidence was not recorded, hence the Application be allowed. However, it appears to be an admitted position that the Applicants were not declared *ex parte*; rather they had filed their written statement; but never came forward to lead evidence; nor even cross-examined the Plaintiff, who was examined on oath by the Court. In that case, an Application under Order 9 Rule 13 CPC was unwarranted and not maintainable.

4. While confronted, learned AAG has not been able to satisfactorily respond as to the conduct of the Applicants in failing to file an Appeal

against the final Judgment and decree and then preferring an application under Order 9 Rule 13 CPC; which on the face of it was not competent as they were not *ex parte* in the Suit; rather had filed their written statement, but failed to contest the Suit any further. In the circumstances as above, no case is made out. Accordingly, this Civil Revision was dismissed by means of a short order in the earlier part of the day and these are the reasons thereof.

J U D G E

Ahmad