IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Application No.S-284 of 2000
[WAPDA through its Chairman & others Vs. Muhammad Ashraf]

Applicants: WAPDA through its Chairman and others represented by Mr. Fayaz Ahmed Laghari, Advocate.

Respondent: NEMO.

Date of hearing & judgment: 31.10.2022.

JUDGMENT

ADNAN-UL-KARIM MEMON, J. Through instant revision application, the applicant has called in question the legality of judgment and decree dated 19.09.2000 and 21.09.2000 respectively passed by learned Additional District Judge, Shahdadpur in Civil Appeal No.12 of 1999, whereby the learned Judge while allowing said Appeal decreed the Suit of respondent/plaintiff by setting-aside the judgment and decree dated 03.11.1999 and 04.11.1999 respectively passed by the Trial Court in F.C. Suit No.36 of 1989.

2. Brief facts of the case in nutshell are that respondent/plaintiff filed F.C. Suit No.36 of 1989 for settlement of Accounts and Injunction against applicants/ defendants stating therein that he is agriculturist and consumer of defendants having Tube well with electric meter through which he irrigate his lands; the staff of applicants/defendants commonly issue enhanced bills and on contact they correct the bills; that in the year 1984 the defendants had demanded payment 8000 units more and after great efforts of plaintiff the defendants realized their mistake and issued such instructions vide memo dated 23.12.1984; that again the defendant charged 36000 units without any record and also refused to adjust the same and on the contrary issued threats of disconnection of electricity, hence he filed suit

3. Upon notice applicants/defendants filed written statement, denying the case of respondent/plaintiff and further asserted that the difference of estimated units charged had already been given and adjusted in the billing process of years 1984, 1985, and 1986; the consumer had paid his dues in May 1985; after correction of final bills and after July 1986 consumer became defaulter of WAPDA; his billing system was fixed on flat rate from July 1986; and, under the system, no value of Units charged but bills used to be issued at the rate of H.P basis as per WAPDA tariff schedule; they lastly maintained that the suit was not maintainable.

4. On the pleadings of the parties, learned Trial Court framed three issues and recorded evidence of the parties and dismissed the suit vide Judgment and decree dated 03.11.1999 & 04.11.1999. The said Judgment was assailed in Civil Appeal No.12 of 1999 whereby learned Additional District Judge, Shahdadpur allowed the appeal and set aside the Judgment and Decree of Trial Court on the analogy that defendants/applicants failed to prove that they had already adjusted the payment of 36800 units as mentioned in the written statement by holding that there was no question of settlement of accounts which stood settled and WAPDA authorities were required to recover Rs.15592/- only from the plaintiff/respondent and nothing else.

5. Mr. Fayaz Ahmed Laghari learned counsel representing the WAPDA has argued that learned Additional District Judge while re-evaluating the evidence and record has wrongly shifted the burden of proof about issue No.1 on the applicants/defendants and while decreeing the Suit learned Appellate Court exercised jurisdiction by committing material irregularity and erroneously decreed the suit of the private respondent without considering the evidence of applicants; that entire Judgment rendered by learned Appellate Court is without appreciation of evidence in its true perspective hence is not sustainable under the law which is liable to be set aside.

6. None present on behalf of respondent despite service, the aforesaid factum is disclosed in the order sheets, leaving this court to decide the lis by hearing the counsel for applicants and perusing the record with his assistance.

7. It appears from the record that the respondents was consumer of applicants and in the year 1984, the applicants demanded payment of 8800 units more than the reading, such mistake was rectified vide letter dated 23.12.1984. Per respondent, he made payment of 36000 units, however, there was no proper adjustment, and claimed that he was not liable to pay the demand of applicants and filed suit for settlement of account. The issues were framed and the suit was dismissed vide judgment dated 03.11.1999 and decree dated 04.11.1999 on the analogy of non-payment of electric bills. The appellate court did not agree with the findings of the Trial Court on the premise that the applicants pleaded in the pleadings that the difference of 36800 units had already been given to respondent-consumer and the details of accounts would be submitted in court, and because of this admission the burden was shifted to applicants to prove that they had given the adjustment of 36800 units to the respondent. The applicant examined Abdul Hameed who deposed that in December 1989 an amount of Rs. 15592/- was due against respondent and the supply of electricity was already disconnected. The learned appellate court held that when the supply was admittedly disconnected how it was restored

and increased the amount in the account of respondent. Revenue Officer admitted that in January 1990 the connection of respondent was disconnected, and at that time an amount of Rs. 15592/- was due. Thus the applicants failed to prove that they already adjusted the payment of 36800 units as per statement at Ex. 64 issued by Revenue Officer. The evidence of Revenue Officer WAPDA, Sanghar shows that the respondent cleared the electricity dues up to 03.03.1988 and there were Rs. 13726/- outstanding against him for previous period which gradually increased to an amount of Rs. 96573/-. He deposed that the average consumption of plaintiff was up to 6000 to 7000 per month and his electricity connection was disconnected in the month of January 1990, and arrears against him were shown Rs. 15592/-. He also admitted that after disconnection, the electricity might have been restored to the plaintiff. However, he showed his un-awareness concerning the charge of 8800 units vide letter dated 24.12.1984 issued by the Executive Engineer.

8. It is settled law that the right to file first appeal against the decree under Section 96 of the Code of Civil Procedure is valuable legal right of litigant. In principle, an appellate court is the final Court as such factual aspect of the case has already been set at naught at appellate stage, now the applicants have agitated the grounds in revision, which have already been taken care of by the appellate court. In view of such facts and circumstances, I would not proceed to reappraise the entire material including the evidence on the assumption that such reappraisal could lead to a different view than the one taken by the competent appellate court. This Court's interference in the findings would be justifiable only when some illegality apparent on the record having nexus with the relevant material is established. Learned Additional District Judge has discussed the entire evidence adduced by the parties, and there appears no illegality in his findings recorded on the facts and law; besides the applicant could not prove his stance in appeal. Thus, I am not persuaded to disturb the finding of learned Additional District Judge on these questions; besides, I do not see any illegality, infirmity, or material irregularity in the impugned judgment and decree passed by learned Additional District Judge in appeal.

9. In the light of above facts and circumstances of the case, the judgment and decree dated 19.09.2000 and 21.09.2000 passed by learned Additional District Judge, Shahdadpur in Civil Appeal No.12 of 1999 is upheld and consequently the instant revision Application is dismissed along with pending application(s) with cost.

JUDGE

Karar_Hussain/PS*