

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
R.A No. 38 OF 2009

DATE	ORDER WITH SIGNATURE OF JUDGE
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For katcha peshi.

25.11.2016.

None present for applicant.
Mr. Aziz Ahmed Leghari, Advocate for respondents.

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ORDER

MUHAMMAD FAISAL KAMAL ALAM- J:- This is a revision application against the judgment and decree dated 02.03.2009 and 06.03.2009 respectively, passed by the learned Ist Additional District Judge, Mirpurkhas, whereby the Civil Appeal No.15 of 2006, filed by the present applicant (Mansoor Ali Abbasi), was dismissed and the judgment and decree (dated 07.02.2006 and 10.02.2006 respectively) passed by the learned Trial Court in Third Class Suit No.27 of 2005 was affirmed.

2. The relevant facts for deciding the present revision application are that the present applicant filed a Suit for Rendition of Account, Declaration and Permanent Injunction against the present respondents and sought following relief:-

“(a) *To direct the defendants to render the account and settle the dispute with the plaintiff.*

(b) *To declare that the application moved by defendants before any revenue Court or Police have no legal sanctity as the matter is of Civil Transaction and application moved by defendants to any revenue Court is null and void.*

- (c) *To grant permanent injunction against the defendants restraining and prohibiting them from moving any false application against the plaintiff by themselves through servants, agents, directly or indirectly in any manner, or means whatsoever.*
- (d) *Any other relief, which this Hon'ble Court may deem fit and proper under the circumstances, be awarded".*

3. Notices were issued to the respondents and they have contested the suit by filing written statement and denied the claim of the applicant that any loan of Rs.150,000/- (Rupees One Lac Fifty Thousand) was given by the applicant/plaintiff to the present respondents. They have mentioned in their pleadings that they are agriculturalists and on the request of the applicant they have given a cheque of Rs.49,200/- (Rupees Forty Nine Thousand Two Hundred) to the applicant as he was working as Junior Clerk, Auqaf Department, Government of Sindh at Mirpurkhas, as according to the respondents they wanted to participate in some auction proceedings. It is further averred in their pleadings that an amount of Rs.100,800/- was also paid to the said applicant/plaintiff in cash for which they have receipt dated 28.08.2004. Since proceeding under Order X Rule 2 of CPC failed, hence the learned Trial Court framed the following issues:-

- “(i) Whether the plaintiff had given a friendly loan of Rs.150,000/- to the defendants out of which the defendants returned Rs.100,800/- to the plaintiff and promised to pay the remaining loan amount Rs.49,200/- shortly, but did not return?**
- (ii) Whether defendants had given a friendly loan of Rs.100,800/- to the plaintiff and receipt thereof was acknowledged by the plaintiff on 28.08.2004?**

- (iii) Whether cause of action has accrued to the plaintiff to file present suit and is entitled to the relief claimed?**
- (iv) Whether suit is not maintainable under the provisions of Money Lenders Ordinance, 1960, and hit by provisions of CPC and Specific Relief Act and liable to be dismissed?**
- (v) What should the decree be?"**

4. The case record shows that the present applicant/plaintiff failed to appear in the matter as he neither filed any list of the witnesses nor led any evidence in support of his claim. The judgment of the learned Trial Court also observes that even (the then) Counsel of the present applicant/plaintiff had given his no objection for dismissal of the suit as he became helpless, as the present applicant/plaintiff was not in contact with him. In such a situation, the learned Trial Court has passed the impugned judgment under Order XVII Rule 3 of CPC, which was subsequently challenged in the above mentioned Civil Appeal No.15 of 2006.

5. The learned Appellate Court after hearing the arguments of the parties did not interfere in the judgment of the learned Trial Court and dismissed the appeal of the present applicant/appellant, hence the present revision application has been filed by the applicant by relying upon the following reported decisions of this Court as well as the Lahore High Court;

- (i) PLD 2006 Karachi 252*
- (ii) 2007 MLD 1945 (Lahore)*

6. The gist of the above case law is that on account of negligence of one party, the other party to the litigation must not suffer, which in my considered view is not applicable to the facts of the present

case. In instant revision application, both the impugned judgments of the Courts below have been challenged on the ground, that firstly there was no direction to the present applicant/plaintiff for filing the list of the witnesses or production of witnesses and secondly all the documents have already been placed on record by the applicant/plaintiff when he filed the above suit. Copy of the plaint is available at Page-39 of the present case file.

7. It is a settled principle that the applicant/plaintiff has to prove his case on its own merits. The contents of the plaint/pleadings do not carry weight unless they are proved by leading evidence and for which the applicant/plaintiff has to enter the witness box and lead the evidence. Admittedly, no such exercise has been undertaken in the proceedings below. The present applicant/plaintiff has also not categorically disputed that his erstwhile Counsel made a false statement before the Trial Court, which resulted in passing the impugned judgment and decree but has only questioned that such a statement of the Counsel against the present applicant was not in writing. It is also a settled principle of law that once a party files a proceeding and sets the law in motion, then the said party / plaintiff / applicant must also be vigilant to pursue his/her remedy in a due and diligent manner. Filing the litigation merely as a pressurizing tactic or to have an edge over one's opponent should be discouraged. Whether or not a proceeding is bonafide/genuine or tainted with some *mala fides*, can be determined from the record of those proceedings, *inter-alia*, that whether the petitioner or the plaintiff vigilantly pursued his remedy or not?

8. From the record and proceeding of the Courts below, it is clear that present applicant was neither present on the day when his

evidence was to be recorded nor filed list of witnesses as required under Order XVI Rule 1 of CPC, and the Trial Court in such circumstances passed the impugned decision of 07.02.2006, which was maintained by the Appellate Court.

9. Various judicial pronouncements have settled the issues raised in the present revisional proceedings. Applicant has neither stated in present Revision that both impugned decisions are contrary to record and tainted with material irregularity nor produced a list of witnesses in the prescribed manner, in order to show that learned Courts below have illegally exercised the jurisdiction, *inter alia*, by overlooking such list, which was there in the suit proceeding.

10. The above discussion if seen in the light of present record, while taking into account the conduct of the applicant, who opted to remain absent on the past many dates, leads to the conclusion that the proceeding initiated by the present applicant was rightly met its fate through the impugned judgments.

11. I do not find any infirmity or material irregularity in the impugned judgments of the Courts below, which can warrant interference in the present revisional jurisdiction of this Court. Consequently, the present revision filed by the applicant is dismissed.

JUDGE

