

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Application No.S-97 of 2023

Applicants : Federation of Pakistan and others, through
M/s. Qurban Ali Malano & Muhammad Imran
Khan, Advocates

Respondent No.2 : Syed Shafqat Ali Shah, through
Syed Sardar Ali Shah Jilani, Advocate

Date of hearing : 19.02.2024

Date of Decision : 26.04.2024

JUDGMENT

ARBAB ALI HAKRO, J.- Through this Civil Revision Application pursuant to Section 115 of the Civil Procedure Code, 1908 (C.P.C.), the Applicants seek to challenge the Order dated 8th March 2023, rendered by the learned Additional District Judge-II (MCAC), Sukkur (hereinafter referred to as the '**appellate Court**') in Civil Appeal No. 30 of 2023. The appellate Court upheld the Judgment and Decree dated 16th May 2022, passed by the II-Senior Civil Judge, Sukkur (hereinafter referred to as the '**trial Court**') in F.C. Suit No. 92 of 2021. The trial Court's decree favouring the plaintiff/respondent was pursuant to Order XII Rule 6 of the C.P.C., and the appellate Court has affirmed this decree by dismissing the appeal.

2. The brief facts leading to the captioned Civil Revision Application are that the respondent filed a Suit for Specific Performance of Contract, Declaration, Recovery of Rs.27,828,000/- and Permanent Injunction against the applicants, claiming that he is a Government contractor with the name & style M/S Shafqat Traders. Defendant No.7 invited tender of the shop at G.T. road near Railway station Rohri for construction of 38 shops, and such tender was published in two daily newspapers, i.e. Dawn and Jang, dated 01.6.2016 and 31.5.2016. The respondent participated in

the bid and offered an amount of Rs.1,39,64000/-; such proposal was accepted by defendant No.3, and the respondent was declared the successful bidder. Afterwards, the respondent deposited 50% of the bid amount of Rs.63,39,000/- and such a letter was issued by the Divisional Accounts Officer on 14.10.2016. Thereafter, defendant No.6 issued a letter for depositing the remaining 50%, which the respondent deposited through a Pay Order issued by Bank Islami Pakistan Ltd; the defendants issued a confirmation letter dated 23.11.2020 to the respondent. It was further asserted that the respondent sent a legal notice to the defendants for the construction of the shop, but they failed. Hence, he filed the suit.

3. The applicant/defendant No.6 contested the suit and filed a written statement wherein he denied the contents of the plaint and claim of respondent No.1. However, he admitted Para No.5 & 6 of the plaint to the extent that the open auction of 38 shops in Auto Plaza Market at G.T. Road near Bridge No.185 at Rohri auctioned to Syed Shafqat Ali Shah on 21.9.2016. The lessee deposited 50% of the bid money Rs.63,39,000/- in favour of D.A.O./Sukkur at the time of auction. He further submitted that several notices dated 21.9.2017, 09.10.2017, 20.10.2017 and 09.11.2020 were issued to the respondent to deposit the remaining 50% bid money of Rs.69,82,000/-, but he did not deposit the amount after approval within the time limit to process the case further. He further submitted that the respondent deposited the remaining 50% amount after about three years, which violates the terms and conditions of leasing out railway land for shops.

4. After filing the above-written statement, the respondent/plaintiff filed an application under Order XII Rule 6 r/w Section 151 of the Code to pass judgment on defendant No. 6's admission. The defendants/applicant replied to the said application by filing legal objections through their Advocate.

5. After hearing the parties, the trial court decreed the respondent's suit under Order XII Rule 6 of the Code vide judgment and decree dated

16.5.2022, which the applicants challenged through Civil Appeal No.30 of 2023; the appellate Court dismissed the Appeal vide Order dated 08.3.2023 and maintained the Judgment and Decree of the trial Court.

6. At the outset, learned Counsel representing the Applicants submits that the learned trial Court has erroneously passed impugned judgment and decree, which was maintained by learned Appellate Court, the same is illegal and unwarranted under the law; that the Respondent failed to fulfil the terms and conditions as laid down in the agreement as he did not deposit requisite amount within stipulated period; that the suit was time-barred but learned trial Court did not consider such aspect of the case as well as objections raised also learned Appellate Court failed to appreciate; further it has been averred that suit cannot be decreed under Order 12 Rule 6 CPC; that both Courts have decided the case on technicalities rather on merits, hence same are liable to be set aside by allowing instant revision application. In support of his contention, learned Counsel placed reliance on the case law reported as **1996 SCMR 696, 1988 SCMR 322, 1958PLD Lahore 169 & 2001 MLD 1615.**

7. Conversely, learned Counsel for the Respondent contends that there are concurrent findings of both Courts below that require no interference as the same is proper and in accordance with law since there is an admission on part of the applicant in his written statement that there is narrow scope of revisional jurisdiction and until and unless there is gross defect or illegality appears in the impugned decisions, this Court cannot interfere in concurrent findings; that the orders are implemented through execution proceedings. In the end, he submits that the instant revision application may be dismissed as both the Courts below did not commit any illegality or infirmity in their decisions. Learned Counsel placed reliance in support of his contentions on the case law cited as **2004 SCMR 471, 1998 SCMR 64, 2011SCMR 1298, 2014 SCMR 161, 2020 SCMR 2046, 2006 PLD SC 309 & 2023 SCMR 354.**

8. The arguments have been heard at quite great length, and the

available record has been carefully perused with the invaluable assistance of the learned counsel for the parties. I also satisfied myself with the correctness and propriety of both the Order, judgments and decrees of the lower Courts, being complete and correct, and thus giving a fair chance for the learned counsel for the applicants to persuade me in the matter of any illegal actions or material irregularities done by the Courts below in the exercise of their jurisdiction.

9. The crux of the matter that influenced the learned Courts below to invoke the provisions of Order XII Rule 6 of C.P.C. for passing a decree on admission hinges on the fact that the appellants have conceded to the plaintiff/respondent's claim in Paragraphs No.11 and 12. This admission is pivotal to the case and forms the basis for the decree. However, before delving into the specifics, it is essential to revisit and reproduce the appellants' response to said Paragraphs No.11 and 12 as provided in their written statement here under: -

“11. Not admitted, it is submitted that the lessee deposited remaining 50% bid money Rs.69,82,000/- vide Pay order No.02035262 dated 18.11.2020 after laps of about 03 years which is clear violation of terms and condition of leasing out Railway land for shops.

12. As for the para No.12 is concerned on payment of remaining 50% bid money the proposal for construction of shops alongwith estimated cost for 38 Nos. shops was sent by Division to Chief Engineer/Open Line, Pakistan Railways, Headquarters Office Lahore for approval.”

2. 10. Order XII Rule 6 of C.P.C. allows the Court to pass a judgment based on admissions made in the pleadings or otherwise without waiting for the conclusion of the trial. In the given paragraphs, the appellants have not admitted to the claim of the plaintiff/respondent. Instead, they have contested the claim by stating that the lessee deposited the remaining 50% of the bid money after a lapse of about 03 years, which they argue is a clear violation of the terms and conditions of leasing out Railway land for shops. This is a denial, not an admission. Paragraph No.12 appears to be a factual statement regarding the procedure followed after paying the remaining 50% of the bid money. It does not contain any admission

regarding the claim of the plaintiff/respondent. Therefore, based on the provided paragraphs, it does not appear that there are clear admissions that would be sufficient to decree the suit under Order XII Rule 6 C.P.C. It is a matter of record that a substantive proposition of both law and fact has emerged. This proposition necessitates a detailed examination, which can only be undertaken subsequent to the settlement of pertinent issues and the comprehensive documentation of the testimonies provided by the parties to the Suit.

11. In accordance with the parties' pleadings, certain contentious issues, both factual and legal, necessitated trial and adjudication by the lower courts. The appellants' admissions in Paragraphs No. 11 and 12 of the written statement did not constitute a confession of the respondent's claim against them, on the basis of which the learned trial Court could have rendered a judgment under Order XII Rule 6 of C.P.C. Given the nature of the parties' pleadings, it was incumbent upon the Court to frame issues and adjudicate the case in accordance with the procedure stipulated in the C.P.C. This procedural mandate was wholly disregarded by both lower courts, thereby vitiating the judgment and decree in accordance with the principle established by the Supreme Court of Pakistan in the case of Macdonald Layton & Company Pakistan Ltd vs. Uzin Export-Import Foreign Trade Co and others(1996 SCMR 696).

12. To invoke the provisions of Order XII Rule 6 of C.P.C., an admission must be unequivocal, clear, unconditional, and unambiguous. When considering an application for a decree based on such an admission, the Court must exercise its discretion judiciously, considering any legal objections that could undermine the suit's maintainability. In this case, certain legal objections regarding the suit's maintainability were raised, but both lower courts failed to address them. It is imperative that the Court does not grant a decree based on an admission without first addressing any objections raised. The issue of admission in the application ought to have been interpreted in conjunction with other evidence to be recorded in the case. After the proceedings, the learned trial Court should

have evaluated its impact in relation to the entire controversy at hand. This comprehensive approach would have ensured a more thorough and balanced assessment of the case, considering all relevant facts and arguments. However, this procedure was not adhered to in the present case, which may have resulted in an incomplete or skewed understanding of the issues at hand. It is crucial for the integrity of the judicial process that all evidence and admissions are considered in their proper context and given due weight in the final judgment. The legislative intent behind Order XII, Rule 6 of the Civil Procedure Code is to expedite the adjudication process by allowing the court to render judgment based on clear admissions, thereby fostering a more efficient resolution of disputes. It is incumbent upon the judiciary to meticulously scrutinize the essential elements of any admission to ascertain whether it possesses the requisite clarity and definitiveness to conclude the matter at hand. Where admissions are fraught with ambiguity, are conditional, or lack clarity, the court must refrain from basing its judgment solely on an interpretative assessment of such admissions. In such instances, the judicious path is to adjudicate the case on its substantive merits following a comprehensive trial. To encapsulate, a crystalline and unqualified admission by a party concerning his liability and obligations is pivotal for the expeditious resolution of the dispute. This principle is exemplified in the authoritative decision of the Supreme Court of Pakistan in the Case of **Divisional Superintendent Postal Services Faisalabad and others v. Khalid Mahmood and others (2023 SCMR 354)**.

13. Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, enshrines the right to a fair trial and due process. This constitutional guarantee encompasses framing issues in light of the divergent pleadings of the parties, the recording of evidence, and the hearing of arguments. Any process that falls short of these fundamental components not only constitutes patent illegality but also violates the provisions of the Constitution. A Court of law is legally obligated to uphold these principles and ensure a fair trial per Article 10-A of the Constitution. Failure to do so

undermines the integrity of the judicial process and infringes upon the constitutional rights of the parties involved.

14. For the forgoing reasons, instant Revision is **allowed**. The Impugned Order, judgment, and decree passed by the learned Courts below are set aside. The trial Court shall undertake the meticulous task of delineating the issues, recording the evidence, and attentively hearing the submissions of the parties on the contentious points at issue. In its pursuit of justice, the trial Court shall remain uninfluenced by the findings encapsulated herein. The trial Court is directed to accomplish this with due dispatch, ensuring a resolution within a span of four months from the date of receipt of this judgment, and shall duly apprise this Court of the progress thereof.

JUDGE

Faisal Mumtaz/PS