

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Rev. No. S-94 of 2021

Wazeer Hussain s/o Ghulam Hussain Brohi

v.

Syed Sabir Shah s/o Wala Shah and others

Applicant	:	Wazeer Hussain s/o Ghulam Hussain, through Mr. Vinod Kumar G. Jessrani, Advocate
Respondent No.1	:	Syed Sabir Shah w/o Wala Shah, through Mr. Atta Hussain Chandio, Advocate
Respondent No.2	:	The Mukhtiarkar (Land Revenue), Larkana
Respondent No.3	:	The Province of Sindh through the Secretary Revenue Department Government of Sindh through Mr. Abdul Waris Bhutto, Assistant Advocate General
Date of Hearing	:	01.03.2024
Date of Order/Decision	:	01.03.2024
Date of Reasons	:	11.03.2024

ORDER

JAWAD AKBAR SARWANA, J.: Through this order, I will decide CMA No.950 of 2022 filed by Syed Sabir Shah (Respondent No.1) under section 151 CPC wherein he has prayed that Civil Revision No.S-94 of 2021 filed by Wazir Hussain (Applicant) should be dismissed on the ground that this Court vide orders

dated 03.02.2022 and 17.02.2022 had put the Applicant (“Wazir Hussain”) on notice as to the maintainability of the Revision on account of non-filing of the required documents under section 115 CPC, and instead of addressing the Court in terms of the aforesaid orders Wazir Hussain filed a Statement dated 14.02.2022 attaching several documents which had not been filed along with the Revision Application. He contended that the Court had not allowed these documents to be produced and Wazir Hussain could not file them without first seeking leave of the Court. He contended that filing of documents is a mandatory requirement of law and relied on the judgment of the Lahore High Court, Rawalpindi Bench reported in 2021 CLC 103. Hence, he sought dismissal of the Revision Application.

2. The learned Counsel for Wazir Hussain contended that the two Civil Revisions, namely Civil Revision No.94/2021 and Civil Revision No.99/2021, are, in fact, arising out of the same subject matter litigation, which was ongoing between the parties since the year 2005. He contended that in the year 2005, Syed Sabir Ali Shah filed F.C. Suit No.31/2005 (old), No.61/2015 (new) seeking specific performance of an agreement dated 19.11.2003. Thereafter, Wazir Hussain filed FC suit No.62/2007 seeking declaration and possession of the same subject property as in F.C Suit No.31/2005 (old), No.61/2015 (new). The trial Court consolidated the two suits and, after hearing the matter, passed judgment dated 30.03.2013 and decree dated 01.04.2013. Wazir Hussain challenged the judgment and decree in Appeal No.14/2013, which was decided in his favour vide Appellate Judgment dated 31.01.2015 and Appellate Decree dated 09.02.2015. Syed Sabir Ali Shah filed Civil Revision No.22/2015 against the Appellate Judgment, which this Court allowed vide its order dated 15.10.2018, and remanded the case to the lower appellate court. Ultimately, the matter was remanded to the trial court, and fresh docket numbers were reassigned. In the second

round, Syed Sabir Shah's suit was registered as F.C. Suit No.61 of 2015, and Wazir Hussain's suit was registered as F.C. Suit No.62/2015. After rehearing the two suits, the trial court announced judgment dated 22.02.2019, dismissing both the suits. Both parties filed appeals. Syed Sabir Shah's appeal was numbered as 67/2019, and Wazir Hussain's appeal was numbered as 66/2019. Both appeals were heard together; and, the appellate court disposed of the same by separate judgments on 12.08.2021. Once again, both parties preferred Civil Revisions. This Court registered Wazir Hussain's Civil Revision as S-94/2021, and Syed Sabir Shah's Civil Revision was assigned number S-99/2021. The learned Counsel contended that both suits and appeals have consistently been heard together by the Courts at the appropriate stages. The docket numbers of the cases are also serial-wise close to each other. He contended that the Revisions assigned different numbers by the High Court were initially listed for hearing on different dates and, although not tagged to each other, yet for the last several dates of hearing were coming up together for hearing. He argued that the documents not filed by him are part of the common record of the two Civil Revisions and relied upon and/or referred by the parties in their pleadings and submissions. He contended that the omission of filing all the documents with the Revision was inadvertent and may be condoned in the larger interest of justice. He argued that an approach that would penalise the Applicant and dismiss the Revision Application would be very harsh and relied on the Supreme Court Judgment in Bashir Ahmed and others v. Ahmed Yar Khan and others, 2013 SCMR 1047.

3. In rebuttal, the learned Counsel for the Respondent submitted that the Supreme Court's judgment relied upon by the Applicant is distinguishable on two grounds. First, in the same judgment, both counsels had agreed to condone the oversight, and thus, the requirement of the first proviso section 115 CPC

was waived. In the present case, there was no such concession. He offered no consent to the opposing counsel. Secondly, in the Supreme Court Judgment, both matters were tagged to be listed together. He contended that Civil Revisions Nos.S-94/20021 and S-99/2021 were not listed for hearing together and on the material dates when this Bench passed the orders on 03.02.2022 and 17.02.2022 directing Wazir Hussain in Civil Revision No.S-94/2021 to address the bench on the maintainability of the said lis alone, while the other Civil Revision No.S-99/2021 was not fixed for hearing. Therefore, the above-mentioned Judgment of the Supreme Court relied upon by the Counsel for Wazir Hussain was very different from the facts of the present case.

4. I have heard both the learned Counsels. It is an admitted position that these two civil Revisions have been proceeding together. They arise from the impugned orders involving cross-disputes against each other. Therefore, in the facts and circumstances of the case, it would not be in the interest of justice to adopt a harsh approach and dismiss one Revision on the ground of non-filing of relevant documents, especially when the opposing parties have each preferred Civil Revisions arising from the same disputed subject-matter. Accordingly, the Civil Revisions should be decided on merits. Even otherwise, the records and documents the parties rely on in the two cases are similar, and the lis appears to have been listed together for the last several dates of hearing, although it has not been tagged. Consistency demands that both Revisions be decided together. Therefore, application CMA No.950 of 2022 is dismissed. The parties are directed to proceed with the Revision application on merits on the next date of hearing.

5. Office is directed to tag Civil Revision Nos.94 of 2021 and 99 of 2021 to be heard and decided together.

6. The Applicant is directed to supply copies of the documents attached to the statement dated 14.02.2022 to the Counsel of Syed Sabir Shah.

7. It is clarified that the observations made herein are confined to providing a background for deciding CMA No.950/2022 and are without prejudice to parties' claims and defences in the Revisions filed against each other and/or any future litigation between them.

8. The above are the reasons for the Order passed by me on 01.03.2024.

Adjourned to 25.4.2024. Order accordingly,

J U D G E

S.Ashfaq/-