IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Civil Revision Application No. **S-36** of **2014**

Applicants	:	Telenor Pakistan Pvt. Ltd. & others, through Mr. Imdad Ali Mashori, Advocate
Respondents	:	Muhammad Nawaz, though his L.Rs., through Mr. Abdul Rehman Bhutto, Advocate

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Date of hearing : 30.01.2020

Date of Order : 30.01.2020

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ORDER

ZAFAR AHMED RAJPUT, J: Briefly stated, facts of the case are that the respondent herein filed a civil suit being No. 22 of 2013 for damages/ compensation of amount Rs. 50,00,000/= against the applicants, averring therein that being owner of a plot bearing Jaryan No. 9087, admeasuring 2500 sq.fts., situated in New Abad Colony, Tapa & Taluka K.N. Shah *(herein after referred to as the "**Suit Plot**")* he, through his son/attorney, entered into a lease agreement with applicant No.1 on 12.09.2007, whereby he leased out the suit plot for installation of BTS Tower for a period of fifteen years at the rate of Rs.96,000/= per year with 7% annual increase in lease amount and at the time of receiving possession of the suit plot, the applicants paid him an amount of Rs. 25,600/= as earnest money. It was also alleged by the respondent that after some time he came to know that the applicant Nos. 3 and 4 were negotiating with one Soomar Khan for installing the tower; hence he filed F.C. Suit No. 03/2008 against the applicants for specific performance of contract which was withdrawn by him, on coming to know that the applicants have installed the tower on Soomar's plot, with permission to file fresh suit for compensation/ damages. It was case of the respondent that due to violation of lease agreement he sustained monitory losses, suffered mental torture and damage to his reputation; hence cause of action accrued to him for filing the instant suit.

2. Applicant No.1 contested the suit by filing written statement, while applicant No. 2 adopted its written statement. In its written statement, the applicant No.1 though admitted that it paid six month's lease money in advance to respondent, yet pleaded that the respondent failed to produce required N.O.C. from local authority, which compelled them to terminate the agreement for which they were empowered under the agreement. It was pleaded in the written statement that the applicant never violated or committed breach of contract but it was negligence of the respondent; hence he is not entitled to any compensation/ damages from the applicants. Applicant No.1 also raised legal objections on the maintainability of the suit, and pleaded that the suit was barred under section 42 and 56 of the Specific Relief Act.

3. Learned Senior Civil Judge, K.N. Shah, in first round of litigation, after framing issues on the divergent pleadings of the parties and recording evidence of the applicant decreed the suit vide judgment and decree, dated 09.05.2011 and 16.05.2011, respectively for the recovery of Rs. 8,05,064/=. Applicants impugned the said judgment and decree in Civil Appeal No. 42/2011 which was heard and allowed by the learned IIIrd Additional District Judge, Dadu vide judgment and decree, dated 13.03.2012 and 15.03.2012 respectively, and remanded the case to trial Court to decide it afresh in accordance with law after allowing the applicants to cross-examine the respondent/witness and leading their evidence. Thereafter, the learned trial Court after recoding pro and contra evidence of the parties, decreed the suit of the respondent for the recovery of Rs. 9,05,064/= by calculating substantial loss due to breach of contract, loss to reputation, mental torture etc., vide judgment and decree, dated 28-02-2013. Against that, the applicants preferred Civil Appeal No. 26 of 2013, which was heard and dismissed by the learned IInd Additional District Judge, Dadu vide judgment and decree, dated 29.01.2014, Aggrieved by the concurrent findings of the Courts below the applicants have preferred this revision application.

4. Learned counsel for the applicants contents that the judgment and decree passed by the Courts below are not sustainable in law as the same have been passed without taking into consideration the legal and factual aspects of the case and documentary and oral evidence on record. He also contends that both the Courts below acted in exercise of their jurisdiction illegally and with material irregularity while passing impugned judgment and decree. He further contents that the Courts below failed to consider that the applicants terminated the agreement by invoking its clause V; hence, applicants did not violate the terms and conditions of the agreement. He added that the learned Courts below erred in deciding Issue No.4, relating to limitation, while observing that the burden of proof lied upon the applicants and their witness did not state even a word on the issue, albeit the issue being issue of law was required to be decided under the provision of Limitation Act. According to him the limitation for filing suit for damages is one year; hence the suit of the respondent was time barred.

5. On the other hand, learned counsel for the respondent has fully supported the judgment and decree passed by the Courts below.

6. It is now well settled principal of law that the powers of High Court in revisional jurisdiction under section 115 C.P.C. are very limited. On reappraisal of the evidence, even if a different view is possible, the High Court cannot substitute its own view and upset the findings of facts concurrently arrived at by the Courts below. Such findings can only be interfered with if the Courts below have misread and misconstrued the evidence on record or have committed any jurisdictional error or any material irregularity and illegality in arriving at such findings. In the instant case, the learned counsel for the applicants failed to point out any misreading and non-reading of evidence or any misconceiving of fact or commission of any jurisdictional error by the learned Courts below.

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7. Against the claim of the respondents, the assertion of applicants is that they terminated the agreement by invoking clause-V of the agreement, which provides that *the lessee may, at its sole option and without the need to assign cause, terminate Lease Agreement during the initial term or any renewal thereof, upon thirty days prior notice*. The learned trial Court while deciding Issue No.1 and 6 assessed the evidence on record and observed that the defendants/applicants witness Syed Usman Ali (Ex:18) himself admitted that he does not know if any notice of termination was given to the plaintiff/respondent by the defendant company and it is correct that he has not produced such copy before the Court. Hence, the applicants failed to prove that they had terminated the agreement by invoking its clause-V.

8. So far the argument of learned counsel for the applicants with regard to limitation is concerned, suffice it to say that as the respondent's claim is for the breach of contract, it can only fall under Article 115 of the First Schedule to the Limitation Act, as held in the case of *Shaikh Shaukat Ali v. The trustees of the Port of Karachi* **(PLD 1975 Karachi 1096)**. Article 115 (ibid) provides period of three years for filing a suit for compensation for the breach of any contract, express or implied, not in writing registered and not specially provided for and the time begins to run when the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases. In the instant case, lease agreement was executed between the parties on 12.09.2007 and the respondent filed the suit on 09.04.2009, which was within time.

9. Section 73 of the Contract Act, 1872 reads:

> *73.* ***Compensation for loss or damage caused by breach of contract:*** *When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual*

course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

The learned trail Court while observing the fact that the agreement was executed between the parties on 12.09.2007 for a period of fifteen years at the rent of Rs. 96,000/= per year and the respondent claimed substantial damages/ loss for the whole period, which was not cogent and reasonable, awarded the compensation/damages to the respondent from the period of executing the lease agreement i.e. 12.09.2007 till the first judgment passed by the Court on 09.05.2011 on the ground that after passing of first judgment, the respondent was set at liberty to utilize his plot on his own will. Such observation of trial Court appears to be within the parameters of section 73 *(ibid)* and I do not find any justification to interfere with the well-reasoned concurrent findings of the Courts below.

10. For the foregoing facts and reasons, as no case is made out on the ground of any irregularity or exercise of jurisdiction not vested in the Courts or failure of exercise of jurisdiction vested in it, the impugned judgments of Courts below do not call for any interference or exercise of discretion on any point of law in this case of concurrent findings. Accordingly, the instant revision application is dismissed along with pending application but with no order as to costs.

JUDGE