JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A. No. 63 of 2019

CH. IMTIAZ AHMAD

VERSUS

MUHAMMAD ILYAS AND OTHERS

Appellant by	:	Mr. Muhammad Rustam Malik, Advocate. Ms. Afshan Malik, Advocate.
Respondents by	:	Mr. Nadeem Hussain Mughal, Advocate. (For Respondent No. 1.)
Date of Hearing	:	04.02.2025.

MUHAMMAD AZAM KHAN, J.:-

1. The instant Regular First Appeal has been filed by the Appellant/Defendant to assail the Order dated 16.7.2018 passed by the learned Civil Judge, 1st Class, East-Islamabad **("Trial Court")** whereby the Appellant/Defendant was proceeded against ex-parte. The Appellant/Defendant has further assailed the *ex-parte* Judgment and Decree dated 11.10.2018 ("**Impugned *ex-parte* Judgment and Decree**") passed by the learned Trial Court whereby the Suit for Specific Performance of Agreement dated 9.12.2014 through Possession, Permanent and Mandatory Injunction **("Suit")** filed by the Respondent No.1/Plaintiff was decreed *ex-parte*.

2. The brief facts of the case are that Respondent No. 1/Plaintiff filed Suit against the Appellant/Defendant. According to the Memo of Appeal, the Appellant/Defendant is the lawful owner of House No. 10, Street No. 09, Fazaia Colony, Khanna Pul, Rawalpindi which is currently occupied by the Respondent No. 1/Plaintiff as a tenant. Upon the Appellant/Defendant's request to vacate the property and filing of an Ejectment Petition before the

learned Rent Controller, Rawalpindi, the Respondent No. 1/Plaintiff allegedly threatened the Appellant/Defendant with dire consequences. The Respondent No. 1/Plaintiff then filed the Suit based on a forged and fraudulent Sale Agreement, regarding the Commercial five storey Plaza namely “Ch. Taj Din Plaza” measuring 18 Marlas situated at main Lehtrar Road, Mouza Khanna Dak, Tehsil and District, Islamabad.

3. The Appellant/Defendant submitted written statement raising several preliminary and legal objections, seeking dismissal of the Suit. The matter was fixed for evidence, but due to the Appellant/Defendant’s absence following the death of his sister-in-law, he was unable to present his evidence. The learned Trial Court proceeded ex-parte and passed the Impugned Judgment and Decree. Consequently, the Appellant/Defendant has filed the present Appeal.

4. The learned counsel for the Appellant/Defendant submitted that the Impugned *ex-parte* Judgment and Decree, as well as the Impugned Order passed by the learned Trial Court are not in accordance with the facts and law of the case and are therefore unsustainable in law; that the decision is founded on misreading and non-reading of the evidence, and crucial material has not been duly considered in reaching these conclusions; that Respondent No. 1/Plaintiff obtained the decree through fraud, misrepresentation, and concealment of facts with *mala fide* intentions; that if the impugned *ex-parte* Judgment and Decree and the Impugned Order are not set aside and the Appellant/Defendant is not allowed to present evidence, it will result in irreparable harm; that the Impugned ex-parte Judgment and Decree as well as the Impugned Order are based on conjecture and surmises as having material irregularities and illegalities, and as such said decisions are passed in a hurried and arbitrary manner without proper application of judicial mind; that in accordance with the well-established principle of "*audi alteram partem*" no person should be condemned unheard whereas this fundamental principle of natural justice has been violated in the present case, as the Appellant/Defendant was not afforded a fair opportunity to present his case; and that the established principles of superior courts emphasize deciding

matters on merits rather than on technicalities, however, the learned Trial Court acted contrary to this principle in the present case.

5. On the other hand the learned counsel representing the Respondent No. 1/Plaintiff argued that the learned Trial Court has committed no illegality or irregularity while deciding the suit ex-parte hence decreed the Suit filed by the Respondents No. 1/Plaintiff.

6. Arguments heard, record perused.

7. The Respondent No. 1/Plaintiff filed Suit for specific performance of agreement dated 09.12.2014 against the Appellant/Defendant namely Ch. Imtiaz Ahmed and 2 others on 23.04.2016 before the learned Trial Court. Summons were issued, Appellant/Defendant appeared before the Court and on subsequent dates filed written statement. The Respondent No.1/Plaintiff filed application for temporary injunction annexed with the plaint which was fixed for arguments. The said application was adjourned on different dates as reveled from the order sheets and final opportunity was given on 28.03.2018 and the case was fixed for arguments on the temporary injunction on 09.05.2018. On that date i.e. 09.05.2018 the case was again adjourned as counsels of the parties were not present and the matter was fixed for 07.07.2018. On 07.07.2018 learned Presiding Officer was on short leave and even on the next date i.e. 11.07.2018 learned Presiding Officer was on leave and the case was fixed for 16.07.2018. On 16.07.2018 the Respondent No. 1/Plaintiff's counsel appeared, while no one was present on behalf of the Appellant/Defendant. On that date the ex-parte proceeding was initiated against the Appellant/Defendant and the case was fixed for ex-parte evidence to be produced on 24.07.2018. On 24.07.2018 the Respondent No. 1/Plaintiff's counsel requested for adjournment and the case was fixed for ex-parte evidence on 10.09.2018 i.e. after summer vacation. On 10.09.2018 complete ex-parte evidence was recorded and the case was fixed for ex-parte arguments on 24.09.2018 on which date due to absence of Respondent No.1/Plaintiff's counsel arguments could not be heard and the case was fixed for 04.10.2018 for ex-parte arguments. On 04.10.2018 ex-parte arguments were heard and the case was fixed for order on 08.10.2018 and on such date the learned Presiding Officer was on leave hence the case was

fixed for ex-parte order on 11.10.2018 and on the said date the suit filed by the Respondent No. 1/Plaintiff was decreed in his favour against the Appellant/Defendant in the light of ex-parte evidence produced by the Respondent No. 1/Plaintiff.

8. In ex-parte evidence, the Respondent No. 1/Plaintiff [Muhammad Ilyas] appeared in the court as PW-1 and got recorded his statement. Ch. Zulfiqar Ali (PW-2) and Irfan Younus (PW-3) also appeared in the Court respectively and reiterated almost the same facts as narrated by the Respondent No. 1/Plaintiff. Both the said witnesses are witnesses of Agreement dated 09.12.2014. In documentary evidence Respondent No. 1/Plaintiff produced Sale Agreement as Ex-P1, Legal Notice as Ex-P2, Transaction Detail Receipt as Ex-P5 Bank Alfalah Account Statement as Ex. P-6, Passport as Ex-P7, picture of Plaza as Ex-P8 and thereafter the Respondent No. 1/Plaintiff closed oral as well as documentary evidence.

9. The Appellant/Defendant applied for certified/attested copy of the Impugned ex-parte Judgment and Decree on 02.04.2019 and on the same date attested copy was issued. He then filed the instant Regular First Appeal on 04.04.2019.

10. According to Article 164 of Limitation Act, 1908 **("Limitation Act")**, the limitation time is 30 days from the date of decree or where the summons was not duly served, when the applicant has knowledge of the decree. In the instant case the Appellant/Defendant was well aware of the Suit, as he filed written statement and then on 16.07.2018 he failed to appear, hence he was proceeded against ex-parte. The ex-parte proceedings were initiated against the Appellant/Defendant and ultimately on 11.10.2018 the Impugned Ex-parte Decree was issued in favour of the Respondent No. 1/Plaintiff. So many dates were adjourned during the ex-parte proceedings and even after the summer vacation the case was fixed for ex-parte evidence and order but the Appellant/Defendant failed to appear. The instant appeal is badly time barred for about 05 months and 24 days. Reliance in this regard is placed upon the Judgment of the Supreme Court of Pakistan titled as *Zulfiqar Ali and others v. Muhammad Akbar Khan and others* **(2003 SCMR 604)** wherein it has been held that:-

> *"Each and every day's delay was to be explained which had not been done in the present case---Appeal was dismissed in circumstances.*"

11. Reliance is also placed upon the case reported as *Sheikh Muhammad Saleem. V. Faiz Ahmad* **(PLD 2003 SC 628)** wherein it has been held that:-

> *"Door of justice was closed after the prescribed period of limitation has elapsed and no plea of injustice, hardship or ignorance could be of any avail unless the delay of each day was properly explained and accounted for."*

12. Guidance is also solicited from the case reported as *Khayal Badshah v. Afzal Khan and 4 others* **(PLD 2015 Peshawar 59)** wherein it has been stated that:-

> *"Defendant filed written statement but disappeared subsequently and filed application for setting aside ex-parte decree after four months and twenty days without sufficient cause---Court could not grant free passage of time to the people who were not vigilant about their rights---Law of limitation had to be construed strictly---Dealy of each day had to be explained by a party."*

13. Further guidance is taken from the case reported as *Raees Ahmed v. Abdul Shafiq and others* **(2001 SCMR 1429).**

14. In light of the dictum laid down by the Superior Courts, I am of the view that the instant Regular First Appeal is badly time barred as the each and every day's delay is required to be explained and the same has not been done in the present case

15. For what has been discussed above, the instant appeal along with the Application of Condonation of Delay is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of February,2025.

JUDGE

//Kamran//