JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CIVIL REVISION NO. 197 OF 2023

SAEED AHMAD

VS

SHABBIR AHMAD & 2 OTHERS

Petitioner by : Rana M. Irshad Khan, Advocate.

Respondents by : Malik Muzaffar Khan Advocate.

Date of Hearing : 27.03.2025

MUHAMMAD AZAM KHAN, J.

1. The Petitioner has filed the instant Revision Petition under Section 115 of the Code of Civil Procedure, 1908 **("CPC")** against the Order dated 12.09.2023 **("Impugned Order")** passed by learned Civil Judge 1st Class (East), Islamabad **("Trial Court")** whereby the application under Section 12(2), CPC filed by the Petitioner for setting-aside *ex-parte* Judgment and Decree dated 15.12.2016, has been dismissed.

2. The brief facts giving rise to filing the instant Revision Petition are that Respondents No.1 & 2 filed a Suit against the Petitioner and another for recovery of damages to the tune of Rs. 30 million on account of malicious prosecution. After the institution of the Suit, notices were issued to the Petitioner/Defendant No.1, but he did not put appearance before the learned Trial Court despite the service of notice, hence, he was proceeded against *ex-parte* and the matter was fixed for *ex-parte* evidence. In *ex-parte* evidence, Respondents No.1 & 2/Plaintiffs appeared in witness box as PW-1 and PW-2, while one Abadat Khan appeared as PW-3. In documentary evidence, they produced a copy of Challan under Section 173 along with an order recorded by learned Judicial Magistrate, Islamabad as Ex.P1 and *Zimnies* recorded by local Police as Ex.P2. After hearing the learned counsel for the Respondents Nos. 1 & 2/Plaintiffs, the learned Trial Court vide *ex-parte* Judgment & Decree dated 15.12.2016 decreed the Suit filed by Respondents No.1 & 2 in their favor and against the Defendants including the Petitioner. On 19.03.2019, the Petitioner filed an Application under Section 12(2), CPC for setting aside *ex-parte* Judgment and Decree dated 15.12.2016 which was contested by Respondents/Decree Holders by filing their written reply. After hearing

arguments of learned counsel for the parties, the learned Trial Court dismissed the Petitioner's Application vide the Impugned Order. Being aggrieved of the Impugned Order, the Petitioner has filed the instant Revision Petition.

3. The learned counsel for the Petitioner submits that the learned Trial Court while passing the Impugned Order has made material irregularities and illegalities, hence, passed perverse and arbitrary order; that the Impugned Order suffers from material irregularities and improper and incorrect understanding of the facts which leads to misreading and non-reading of the material facts and resultantly nullifies the Impugned Order; that the learned Trial Court has not applied its judicial mind and has decided the application in a hasty manner; that the Impugned Order is not sustainable in the eyes of law being non-speaking order which is liable to be set aside to meet the ends of justice; and that the learned Trial Court while dismissing the Petitioner's Application under Section 12(2) CPC, failed to appreciate the documents relied upon by the Petitioner to prove the fraud and misrepresentation committed by the Respondents/Plaintiffs, hence, passed a factually incorrect and illegal order. Lastly, the learned counsel for the Petitioner prayed that the instant Civil Revision Petition may be allowed and the Impugned Order may be set aside.

4. On the other hand, the learned counsel for Respondents submitted that the Impugned Order has been passed after considering the facts and the record of the case, that the learned Trial Court issued a well-reasoned order; and that there is no illegality or irregularity in the Impugned Order. The learned counsel, therefore, prayed for the dismissal of the present Civil Revision Petition.

5. I have heard the learned counsel for the parties and have also perused the relevant record with their able assistance.

6. The Respondents No.1 & 2/Plaintiffs filed a Suit for damages against the Petitioner, which was decreed *ex-parte* on 15.12.2016. The Petitioner/Defendant No. 1 was summoned in that suit and on the back of that summon, the Process Server obtained signature bearing date of 19.03.2015 along with an undertaking by the Process Server that the summon has been served personally on the Petitioner/Defendant No.1 namely Saeed Mumtaz. Notwithstanding personal service, the Petitioner/Defendant No. 1 did not appear before the learned Trial Court, nor did he file an application to set aside the ex-parte proceedings or the ex-parte Judgment & Decree dated 15.12.2016. The Petitioner filed an Application under Section 12(2), CPC before the learned Trial Court on 19.03.2019, on the

ground that Respondents have obtained the *ex-parte* Judgment & Decree on the basis of fraud and misrepresentation. The grounds mentioned in Section 12(2), CPC are **(i)** fraud, **(ii)** misrepresentation, and **(iii)** want of jurisdiction. The Petitioner was duty bound to prove these three grounds before the learned Trial Court in order to challenge the validity of the *ex-parte* Judgment & Decree. The Petitioner agitated that he was not in the knowledge of the suit and he has not been served any summon from the Court. The Petitioner has failed to point out any fraud, misrepresentation or want of jurisdiction before the learned Civil Judge. The learned Civil Judge compared the signature of the Petitioner on the back of summon to that of Application filed under Section 12(2), CPC, affidavit annexed therewith and CNIC and held that the signatures are quite similar. Usually, when a party disputes his/her signature and thumb impression on any document, then in that case, specimen signatures/thumb impression are sent to the Forensic Science Laboratory for comparison, however, there is an exception available under Article 84 of the Qanun-e-Shahadat Order, 1984, wherein Court could compare the signature of the party of its own without sending the specimen signatures for forensic analysis. Thus, the learned Civil Judge has rightly compared the signatures of the Petitioner. Instead of filing an application to set aside the *ex-parte* Judgment and Decree, for which a 30-day limitation period is prescribed under Article 164 of the Limitation Act, 1908, the Petitioner filed an application under Section 12(2), CPC, but failed to substantiate the grounds mentioned in it.

7. For what has been discussed above, the learned counsel for the Petitioner has failed to point out any illegality or material irregularity in the Impugned Order dated 12.09.2023. Hence, the instant Civil Revision being devoid of any merit is hereby ***dismissed***. There shall be no order as to the costs.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this 8th day of April 2025.

JUDGE

/Mehboob/