JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

REGULAR FIRST APPEAL NO. 213 OF 2015

MUHAMMAD RAHZEB ABBASI

Vs

RAJ MUHAMMAD ABBASI & ANOTHER

Appellant by : Malik Mushtaq Ahmed, Advocate.

Respondents by : Respondent No.1 in person.

Date of hearing : 03.03.2025

MUHAMMAD AZAM KHAN, J.

1. By this judgment, I intend to dispose of the titled Regular First Appeal filed against the Ex-parte Judgment & Decree dated 18.06.2015 **("Impugned Ex-parte Judgment & Decree")** passed by the learned Civil Judge, Islamabad (West) **("Trial Court")** whereby the Suit for Declaration, Recovery of Rs. 15,000,00/-, Permanent and Mandatory Injunction **("Suit")** filed by the Appellant/Plaintiff has been dismissed.

2. The brief facts of the case in hand as per the Memo of Appeal are that father of Respondent No.1/Defendant No.1 (Raj Muhammad Abbasi) is running a business of Real Estate in the name of M/S Marriott Property and Appellant/Plaintiff joined him as a business partner. The M/S Marriot Property had a long term business relationship with the Respondent No.2/Defendant No.2 (Ch. Muhammad Zamurad Khan), who wanted to purchase 400 Kanal of land. It was agreed between the parties in Memorandum of Understanding **("MOU")** that M/S Property would provide 400 Kanal of land to Respondent No.2/Defendant No.2 against the total sale consideration of Rs. 350,000,000/- and sum of Rs. 20,000,000/- was paid by the Respondent No. 2/Defendant No. 2. On 30.01.2010, Respondent No. 1/Defendant No. 1 and Respondent No. 2/Defendant No. 2 with their mutual consent decided to cancel the said deal, therefore, a formal deed of cancellation of MOU was signed between the parties. The Appellant/Plaintiff made repayment of Rs.11,000,000/-, while the remaining amount of Rs. 4,200,000/- was to be paid by Respondent No.1/Defendant No.1,

who asked the Appellant/Plaintiff to make initial payment of Rs.1,200,000/-. All these payments made by the Appellant/Plaintiff and Respondent No. 1/Defendant No. 1 were duly acknowledged by the Respondent No. 2/Defendant No. 2 through Receipt dated 06.07.2010. As the Appellant/Plaintiff had received only Rs.10,700,000/- as earnest money, hence, he was only liable to that extent and rest of Rs. 4,500,000/- were to be paid by Respondent No.1/Defendant No.1, but as the Appellant/Plaintiff had a strong faith in his partner, hence, he paid Rs. 1,500,000/- more than his liability on behalf of Respondent No.1/Defendant No.1. Thereafter, Appellant/Plaintiff time and again requested the Respondent No. 1/Defendant No. 1 to return his amount of Rs. 1,500,000/- and to make repayment of Rs.1,800,000/- to Respondent No. 2/Defendant No. 2 but he refused to do so, hence, the Appellant/Plaintiff filed the above stated Suit.

3. The learned Trial Court issued notices to Respondents/Defendants, whereupon Respondent No. 1/Defendant No. 1 contested the Suit by filing written statement, while despite notices as well as proclamation, no one put appearance on behalf of Respondent No. 2/Defendant No. 2, hence, he was proceeded against ex-parte vide Order dated 21.03.2013. Thereafter, out of divergent pleadings of the parties, the learned Trial Court framed issues vide Order dated 15.05.2014 and matter was fixed for evidence of the Appellant/Plaintiff.

4. In evidence of the Appellant/Plaintiff, the Appellant/Plaintiff himself appeared in witness box before the learned Trial Court on 11.06.2015 and recorded his statement on oath as PW-1, wherein he reiterated the same facts as mentioned in his plaint. In documentary evidence, the Appellant/Plaintiff produced copy of MOU as Mark-A; copy of cancellation of MOU as Mark-B; copy of sale agreement regarding shops Nos. 63 & 65 as Mark-C; copy of sale agreement regarding Flat No. 4 as Mark-D; copy of Receipt regarding receiving of amount as Mark-E; detail regarding payment of amount due upon Respondent No. 1/Defendant No. 1 as Mark-F; Application to President Anjuman Tajran, G-9 dated 18.04.2012 as Mark-G; Application to President Anjuman Tajran, G-9 dated 06.03.2012 as Mark-H; documents regarding partnership in M/s Sun Marketing (five pages) as Mark-I; and copy of Letter No.2(5)/MP/09 dated 28.05.2009 as Mark-J and thereafter learned counsel for the Appellant/Plaintiff

closed the evidence on behalf of the Appellant/Plaintiff. On the other hand, despite repeated calls, none appeared on behalf of Respondent No. 1/Defendant No. 1, hence, his right to cross-examine the Appellant/Plaintiff was struck off and he was proceeded against ex-parte vide Order dated 11.06.2015. After that, the learned Trial Court heard ex-parte final arguments of the learned counsel for the Appellant/Plaintiff and vide the ex-parte Impugned Judgment & Decree dated the Appellant/Plaintiff's Suit was dismissed. Being aggrieved of the Impugned Ex-parte Judgment & Decree, the Appellant/Plaintiff has filed the instant Regular First Appeal.

5. The learned counsel for the Appellant/Plaintiff argued that the Impugned Ex-parte Judgment & Decree is against the law, facts and circumstances of the case; that the Impugned Ex-parte Judgment & Decree ex-facie reveals that the same is bad in law, not tenable in law and based on whims and caprice; that the Impugned Ex-parte Judgment & Decree is reckless exercise of discretion and besides the basic spirit of law; that the learned Trial Court has dismissed the Suit merely on technical grounds which are not warranted under the law; It is a well-established legal principle that cases should be decided based on their merits, and technicalities should not obstruct the delivery of justice, however, in the case of the Appellant/Plaintiff, this principle was not applied by the learned Trial Court; that in the fitness of things, the learned Trial Court should have accepted the claim of the Appellant/Plaintiff as Respondents were proceeded against ex-parte and thereafter, the Appellant/Plaintiff also led his evidence in support of his version, however, the learned Trial Court did not consider this fact and passed the Impugned Ex-parte Judgment & Decree in hasty manner, which is not justified in any manner whatsoever; that the Appellant/Plaintiff produced oral as well as documentary evidence in support of his version as required under the law, therefore, application of Article 79 read with Article 7 of the Qanun-e-Shahadat Order, 1984 does not attract to the present case. Lastly, the learned counsel requested that instant Appeal may kindly be accepted, Impugned Ex-parte Judgment & Decree may kindly be set-aside, and the Appellant/Plaintiff's Suit may be decreed as prayed for.

6. The Respondent No.1 appeared in person and, while arguing the case himself, fully supported the Impugned Ex-parte Judgment & Decree passed by

the learned Trial Court. He further contended that the learned Trial Court, while passing the Impugned Ex-parte Judgment & Decree, has rightly dismissed the Suit filed by the Appellant/Plaintiff. Lastly, Respondent No. 1 prayed for the dismissal of the instant Appeal.

7. The Respondent No. 2/Defendant No. 2 passed away during the pendency of instant Appeal however his legal heirs have not been impleaded as respondents by the Appellant.

8. The learned counsel for Appellant/Plaintiff and Respondent No. 1 have been heard and record perused with their able assistance.

9. The Appellant/Plaintiff testified as the sole witness (PW-1) in support of his claim, as outlined in the plaint, and presented photocopies of all relevant documents. It is quite surprising to this Court that the learned Trial Court accepted these photocopies produced by the Appellant/Plaintiff as evidence. In the Qanun-e-Shahadat Order, 1984 there is no concept of "Mark" of Photostat copies of documents produced during evidence. According to Article 75 of the Qanun-e-Shahadat Order, 1984, documents must be proved by primary evidence except in the cases hereinafter mentioned. According to Article 74 of the said Order, a document can be proved through secondary evidence, which means and includes:-

> *(1) certified copies given under the provisions hereinafter contained;*
>
> *(2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;*
>
> *(3) copies made from or compared with the original;*
>
> *(4) counterparts of documents as against the parties who did not execute them;*
>
> *(5) oral accounts of the contents of a document given by some person who has himself seen it.*

10. The photocopies produced by the Appellant/Plaintiff have no evidentiary value under the Qanun-e-Shahadat Order, 1984, hence, the same cannot be produced before a Court of law. Therefore, the Appellant/Plaintiff has failed to prove his claim in the Suit and the sole evidence of the Appellant/Plaintiff, until

and unless corroborated by independent witnesses, will have no value in the eyes of the law.

11. In addition to the above, the instant Appeal under Section 96 of the Code of Civil Procedure, 1908 **(CPC)** is badly time barred as the learned Trial Court dismissed the Appellant/Plaintiff's Suit on 18.06.2015 and he filed the instant appeal before this Court on 15.12.2015 which is beyond the limitation period of 90 days provided under the Limitation Act, 1908.

12. For what has been discussed above, the instant Appeal is not competent not only on merits but also on the point of limitation and is hereby **dismissed** accordingly.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on 7th day of April, 2025.

JUDGE

//Mehboob//