JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

REGULAR FIRST APPEAL NO. 222 OF 2015

HIGHER EDUCATION COMMISSION

VS

MR. TANVIR SHARIF ETC

Appellant by : Mr. Binyamin Abbasi Advocate for the Appellant.

Respondents by : Mr. Muhammad Afzal Advocate for the Respondents.

Date of hearing : 18.02.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Appeal, the Appellant has assailed the Judgment and Decree dated 01.10.2015 **("Impugned Judgment and Decree")** passed by the learned Civil Judge 1st Class, Islamabad-West **("Trial Court")** whereby the Suit for Recovery, filed by the Appellant/Plaintiff, has been partially decreed.

2. The brief facts of the case in hand as per the Memo of Appeal are that the Appellant/Plaintiff invited applications for grant of scholarship program namely "Master leading to Ph.D Scholarship for Teacher of Weaker Universities" and the Respondent No. 1/Defendant No. 1 [Mr. Tanvir Sharif] applied for said program by mentioning the Respondent No. 2/Defendant No. 2 [Muhammad Sharif] (since deceased) being guarantor of the Respondent No. 1/Defendant No.1. Later on, the Respondent No. 1/Defendant No.1 was selected and awarded the said Scholarship. The Appellant/Plaintiff asked the Respondent No. 1 /Defendant No.1 to submit the documents *viz a viz* (i) a Deed of Agreement dated 03.12.2007 **("Agreement")**; (ii) Guarantee executed by the Respondent No. 2/Defendant No.2; (iii) Certificate of the Financial Soundness Surety/Guarantor; (iv) Declaration of Assets; and (v) Surety Bond for undertaking studies. After completion of usual formalities, the final award letter was issued to the Respondent No. 1/Defendant No.1 and as per the agreement, the Respondent No. 1/Defendant No.1 was bound to return to Pakistan immediately after completion of approved course of study and to serve in Pakistan/his parent organization for a period of six years as per Clause (VIII) of the Deed of Agreement. As per the accepted terms and conditions of said agreement, if the Respondent No. 1/Defendant No.1 fails to comply with the terms and

conditions of the Agreement, the Respondent No. 1/Defendant No.1 will be bound to refund/pay to the Appellant/Plaintiff the total amount of expenditure scholarship including the travel cost incurred on the Respondent No. 1/Defendant No.1/Defendant No. 1 along with penalty as given by the Appellant/Plaintiff. The Respondent No. 1/Defendant No.1 proceeded to France on 27.6.2008 and completed his Ph.D in December, 2012 after being awarded a nine-month extension. On 07.01.2013, the Respondent No. 1/Defendant No.1 informed the Appellant/Plaintiff that he wants to stay for another three to four months through supervisor funding. The Appellant/Plaintiff informed the Respondent No. 1/Defendant No.1 that his request may be considered if he had been granted such permission from his parent University i.e. Government College University Faisalabad, for his extension. The Parent University of the Respondent No. 1/Defendant No.1 issued notice to him for the absence from duty and Appellant/Plaintiff also issued explanation letter regarding the same but no response from the Respondent No. 1/Defendant No.1 was received. The Appellant/Plaintiff as well as his parent university allegedly issued numerous notices to the Respondent No. 1/Defendant No.1 but no response was received. The Respondent No. 1/Defendant No.1 admitted breach of agreement in response to Legal Notice issued by the Appellant/Plaintiff and showed his readiness to pay the outstanding amount in installments. The Appellant/Plaintiff accepted request of payment in installments by the Respondent No. 1/Defendant No.1 and a plan for five installments was communicated to him which was duly accepted by the Respondent No. 1/Defendant No.1. On 15.04.2014, the Respondent No. 1/Defendant No.1 paid first installment of Rs.1,000,000/- i.e. Euro 7605/-, however, he did not pay the second installment which was due against him on 15.05.2014. The terms and conditions of the Agreement and Guarantee signed and executed by the Respondents/Defendants respectively have binding effects on the Respondents/Defendants to pay the outstanding amounts inclusive of penalty @ 25% to the Appellant/Plaintiff. The Appellant/Plaintiff filed Suit for Recovery before the learned Trial Court. The Respondents/Defendants filed written statements by partially controverting the assertions made by the Appellant/Plaintiff both legal as well as factual aspects of the case and prayed for the dismissal of the Appellant/Plaintiff's suit. After framing of issues, recording of evidence, and hearing arguments of the learned counsel for the parties, the learned Trial Court decreed the Appellant/Plaintiff's suit to the extent of recovery of the amount i.e. expenses which were incurred on the study of the Respondent No. 1/Defendant

No.1. Being aggrieved of the Impugned Judgment and Decree, the Appellant/Plaintiff has filed the instant Appeal.

3. The learned counsel for the Appellant/Plaintiff argued that the Impugned Judgment and Decree passed by the learned Trial Court has been passed without proper application of judicial mind and true aspects of the Deed of Agreement and its clauses; that the Impugned Judgment and Decree suffers from misreading and non-reading of evidence in view of admission made by the Respondents/Defendants and as per Deed of Agreement; that there is sufficient material/evidence available on record which could have made the learned Trial Court to decree the suit as prayed for in favor of the Appellant/Plaintiff; that the Impugned Judgment and Decree is the result of non-application of judicial mind and the issues have not been decided in its true perspective as per Clause XII sub-clauses (a) & (b) and Clause XIII of the Agreement; that the learned Trial Court has passed the Impugned Judgment and Decree in a mechanical and slipshod manner; that the Impugned Judgment and Decree is against the law and facts of the case. In the last, the learned counsel prayed that instant Appeal may kindly be allowed, Impugned Judgment and Decree may graciously be modified/enhanced and the suit of the Appellant/Plaintiff be decreed as prayed for in favor of the Appellant/Plaintiff and against the Respondents/Defendants.

4. On the other hand, the learned counsel for the Respondents/Defendants argued that after payment of fee of the Respondent No. 1/Defendant No. 1 by the Appellant/Plaintiff, the payment of the fee was delayed and the Respondent No.1/Defendant No.1 has to bear the expenses from his own pocket; that breach of the Agreement is on the part of the Appellant/Plaintiff and not the Respondents/Defendants as they have not fulfilled the commitment in time; that the Appellant/Plaintiff has failed to submit the actual expenditure incurred on the Respondent No.1/Defendant No.1.

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

6. The Respondent No. 1/Defendant No. 1 has availed the scholarship on the fundings provided by the Appellant/Plaintiff [Higher Education Commission] and as per the Agreement and the Bond executed by the Respondent No.1/Defendant No.1, he has to serve in Pakistan for a period of six years as per Clause VIII of the Agreement; that as per accepted terms and conditions of the Agreement, if the Respondent No.1/Defendant No.1 fails to comply with the terms and conditions of

the Agreement, he will be bound to refund/pay to the Appellant/Plaintiff, the total amount of expenditure incurred on his scholarship including the travel cost along with penalty as prescribed by the Appellant/Plaintiff. The Respondent No.1/Defendant No.1 proceeded to France on 27.06.2008 and completed his Ph.D in December, 2012. On 07.01.2013, he informed the Appellant/Plaintiff that he wants to stay for another 3/4 months through supervisor funding but his parent University issued notice of his absence from duty against him. The Parent University of Respondent No.1/Defendant No.1 issued several notices but no response received to them. The Respondent No.1/Defendant No.1 admitted breach of agreement in response of Legal Notice which was issued by the Appellant/Plaintiff, and showed his willingness to pay the outstanding amount in installments, which was accepted. The Respondent No.1/Defendant No.1 according to installment plan paid one million rupees i.e. Euro 7,605/- as first installment on 15.04.2014 but failed to pay second installment which was due against him on 15.05.2014. Ultimately, the Appellant/Plaintiff filed suit against the Respondents/Defendants.

7. The suit was contested by the Respondents/Defendants by filing written statement and after framing of issues, the suit of the Appellant/Plaintiff was decreed vide the Impugned Judgment and Decree in the following terms: -

> *"14. The crux of my findings on the issues supra is that the plaintiff has filed suit for recovery of EURO 39545/- and Rs.76,825/- alongwith penalty of 25% on the basis of Ex-P5 and Ex-P6 and in view of the findings on proceedings issues in favor of the plaintiff, it reveals that the same are not denied by defendants and to complete his scholarship of Master leading to Ph.D Scholarships for Teachers of Weaker Universities as per scholarship awarded to him, therefore, keeping in view the condition of the defendants, the suit of plaintiff is decreed to the extent of recovery of amount i.e. expenses which were incurred on study of defendant No.1. Parties are left to bear their own costs. Decree sheet be prepared. File be consigned to record room after its due completion."*

8. The Appellant/Plaintiff felt aggrieved from the Impugned Judgment and Decree and filed the instant Regular First Appeal contending herein that though the learned Trial Court decreed the claim of the Appellant/Plaintiff to the extent of recovery of amount i.e. expenses which were incurred on study of the Respondent No.1/Defendant No.1, but failed to pass decree regarding 25% penalty as stipulated in the Agreement between the parties.

9. The Appellant/Plaintiff's counsel submitted a "Revised Standard Operating Procedures" dated 11.4.2013, which outlines procedures for various situations. Under the heading of 'Breach of Agreement', which stipulates that "if a scholar is held for the breach of Agreement, the *expenses incurred on the scholar plus a penalty up to 25% may be recovered from the scholar and guarantor"*. In addition to this, the Respondent No.1/Defendant No.1 entered into the Agreement with the Appellant/Plaintiff and agreed that in case of violation of the Agreement, the Respondent No.1/Defendant No.1 shall compensate the Appellant/Plaintiff by making a refund of the total amount of expenditure including travel cost incurred on him in Pakistani rupees and in foreign currency or its equivalent in Pakistani rupees at the official rate of exchange prevalent on the date of breach of the Agreement. Moreover, the amount of penalty and the compensation as prescribed and assessed by the Appellant/Plaintiff shall be final and conclusive.

10. By entering into the said Agreement with the Appellant/Plaintiff, the Respondent No.1/Defendant No.1 agreed to adhere to the terms and conditions of the Agreement and committed to undertake the course of studies on the scholarship to be funded by the Appellant/Plaintiff. As such the learned Trial Court has failed to appreciate this aspect of the undertaking made by the Respondent No.1/Defendant No.1 and has failed to grant decree in respect of the fine imposed by the Appellant/Plaintiff in the case of violation of the Agreement i.e. the Respondent No.1/Defendant No.1 has to serve the country and the parent University for six years.

11. With the above said observations, the present Appeal is **accepted**, and the Impugned Judgment and Decree passed by the learned Trial Court is modified to the extent that the Appellant/Plaintiff is entitled to the decree as prayed for in the plaint, which includes the penalty of 25%, along with the cost of litigation.

(MUHAMMAD AZAM KHAN)
JUDGE

Sajid/--