Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

(JUDICIAL DEPARTMENT)

F.A.O No. 76 of 2018

Saim Sadiq and others

Versus

Muhammad Asif.

Appellants by:	Ch. Hafeez Ullah Yaqub and Mr. Muhammad Arslan, Advocates.
Respondent by:	Raja Abid Hussain Janjua, Advocate.
Date of Decision:	**18.11.2021.**

TARIQ MEHMOOD JAHANGIRI, J: Through the instant First Appeal against Order (F.A.O), the appellants have impugned order dated 20.06.2018, passed by learned Civil Judge 1st Class, West-Islamabad, whereby objection petition under Section 47 of CPC, filed by the appellants was dismissed.

02. Brief facts of the case are that the respondent filed a suit for recovery of Rs. 1,10,00,000/- as damages for malicious prosecution against the appellants and one Zumrad Hussain before this Court in the year 2011. The appellants / defendants filed their written statement but after amendment in the law, pecuniary jurisdiction was changed, consequently case was transferred to the District Court, Islamabad. The suit filed by the respondent

was decreed ex-parte vide judgment and decree dated 11.09.2014, by learned Civil Judge, West-Islamabad to the extent of Rs. 42,00,000/-.

03. The respondent / decree holder has filed an application for execution of said decree, the appellants filed an application under Order IX Rule 13, CPC for setting aside ex-parte judgment and decree dated 11.09.2014, which was dismissed by learned Civil Judge vide order dated 05.11.2015.

04. An appeal was filed against order dated 05.11.2015, which was allowed by this Court and the case was remanded back to learned Civil Court for decision afresh on merits but learned Civil Judge again dismissed the application on 21.06.2017.

05. The appellants filed an appeal against order dated 21.06.2017, before this Court which was dismissed, thereafter the appeal filed before the Hon'ble Supreme Court of Pakistan, which was also dismissed on 15.01.2018. The appellants / judgment debtors filed petition under Section 47 of CPC before learned trial Court but the same was dismissed vide order dated 20.06.2018, hence the instant F.A.O.

06. Learned Counsel for the appellants has *inter alia* submitted that impugned order is illegal, against facts of the case; learned Civil Judge has no territorial as well as pecuniary jurisdiction to try the suit as only Civil Court, East-Islamabad was competent to adjudicate upon the suit as criminal case due to which suit for damages for malicious prosecution was filed, was registered in police station Sihala, Islamabad which falls within the territorial jurisdiction of Sessions Division, East-Islamabad; the impugned order is erroneous, not tenable under the law, hence liable to be set-aside.

07. Conversely, learned counsel for the respondent has controverted the arguments made by learned counsel for the appellants and has stated that the impugned order has rightly been passed by learned Executing Court; the appellants have exhausted all their remedies upto the Hon'ble Supreme Court of Pakistan, hence the objection petition under Section 47 of CPC was not maintainable and has prayed for dismissal of the instant F.A.O.

08. Arguments advanced by learned counsel for the parties have been heard and record has been perused with their able assistance.

09. It is an admitted fact that the respondent filed a suit for recovery of damages amounting to Rs. 1,10,00,000/- in this Court. The appellants filed written statement, subsequently the case was transferred to the District Courts of Islamabad due to amendment in the law, wherein pecuniary jurisdiction was changed.

10. The issues in the suit were framed on 30.08.2013, both the parties were directed to produce their evidence but after framing of issues, the appellants / defendants did not join the proceedings of the suit, resultantly an ex-parte order was passed on 07.04.2014. Ex-parte evidence of the respondent was recorded and learned Civil Judge, Islamabad decreed the suit of respondent to the extent of recovery of Rs. 42,00,000/- from the appellants and dismissed the same to the extent of remaining claim with cost of Rs. 25,000/- vide judgment and decree dated 11.09.2014.

11. The appellants filed petition under order IX Rule 13 CPC for setting aside ex-parte judgment and decree dated 11.09.2014, but the same was dismissed by learned trial Court on 05.11.2015. Being aggrieved, appellants filed first appeal against

order dated 05.11.2015 in this Court, the FAO No. 33/2016 was disposed of while remanding back the matter to learned trial Court for deciding application for setting-aside ex-parte proceedings afresh on its merit. After remanding the case from this Court, learned trial Court again dismissed the application under Order IX Rule 13 filed by the appellants vide order dated 21.06.2017.

12. The appellants again filed F.A.O No. 125/17 against order dated 21.06.2017 in this Court, which was also dismissed on merits vide order dated 29.11.2017.

13. Being aggrieved, the appellants filed an appeal in Hon'ble Supreme Court of Pakistan against order dated 29.11.2017, after hearing the parties, Civil Petition No. 28/2018 was dismissed by the Hon'ble Supreme Court of Pakistan vide order dated 15.01.2018.

14. After dismissal of Civil Petition, filed by the appellants before the Hon'ble Supreme Court of Pakistan, judgment and decree dated 11.09.2014 attained finality but the appellants after exhausting all the remedies upto the Hon'ble Supreme Court of Pakistan, filed an objection petition under Section 47

of CPC in the learned Executing Court on the ground that the Civil Court, East-Islamabad was competent to adjudicate upon the matter and Civil Court, West-Islamabad was not competent to decide the matter, as police station, wherein the FIR was registered, falls within the Sessions Division of East, Islamabad, the objection petition was dismissed vide impugned order dated 20.06.2018.

15. The appellants have not taken the objection regarding territorial jurisdiction at initial stage, issues were framed in their presence, they neither objected nor filed any petition for framing the issues regarding territorial jurisdiction. Section 21 of CPC is reproduced hereunder;

> ***"No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been a consequent failure of justice".***

16. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as ***Faqir Muhammad Vs. Pakistan through Secretary, Ministry of Interior and Kashmir Affairs Division, Islamabad (2000 SCMR 1312),*** that;

"It is significant to note that section 21 of C.P.C. provides that no objection as, to the place of suing shall be allowed by any appellate or revisional Court unless there was "a consequent failure of justice". This section provides statutory recognition that an objection about territorial jurisdiction can be waived. Objection about 'territorial jurisdiction' and objection about 'competence of Court' are distinct. The former can be waived and the latter cannot be ignored".

17. It is evident that ex-parte judgment and decree dated 11.09.2014, was up held upto the Hon'ble Supreme Court of Pakistan so after exhausting all the remedies upto the Apex Court of the Country, filing of objection petition under Section 47 of CPC on 02.06.2018 i.e. after about four years of passing of the judgment and decree by taking absolutely new plea / objection, is not warranted under the law.

18. During the pendency of execution proceedings, the appellants have paid an amount of Rs. 9,50,000/- to the decree holder which clearly indicates that by making part payment the appellants have accepted the decree and also made compliance in the execution proceedings but did not

pay the full amount of Rs. 42,000,00/- according to the judgment and decree dated 11.09.2014.

19. Judgment and decree dated 11.09.2014, has attained finality upto Hon'ble Supreme Court of Pakistan, no infirmity / illegality in the impugned order is found, the learned Executing Court has rightly dismissed the objection petition under Section 47 of CPC vide impugned Order dated 20.06.2018, hence the instant appeal is devoid of merits and same is hereby **dismissed**.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-

Approved for reporting.