JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.203/2017
Federal Board of Intermediate and Secondary Education, Islamabad
Versus
Muhammad Taimoor

Date of Hearing: 23.10.2019
Petitioner by: Mir Afzal Malik, Advocate
Respondent by: Mr. Danish Mumtaz, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition, the petitioner, Federal Board of Intermediate and Secondary Education, Islamabad, impugns the judgment and decree dated 09.02.2017 passed by the Court of the learned Incharge District Judge (West), Islamabad, whereby its appeal against the order dated 20.09.2016 and *ex parte* judgment and decree dated 03.12.2015 passed by the Court of the learned Civil Judge, was dismissed. Vide the said order dated 20.09.2016, the learned Civil Court dismissed the petitioner's application to set aside *ex parte* judgment and decree dated 03.12.2015, whereby the respondent's suit for declaration etc., seeking a change/rectification of the date of birth entered in his Secondary School certificate, was decreed.

2. The facts relevant for the disposal of this petition are that on 30.04.2015, the respondent filed a suit for declaration etc., praying *inter alia* for a declaration to the effect that his correct date of birth is 02.06.1997 and not 14.10.1994. The respondent/plaintiff further prayed for a direction to the petitioner/defendant for issuance of fresh secondary school certificate showing 02.06.1997 as his date of birth.

3. The record shows that on 19.06.2015, a memo of appearance was filed on behalf of the petitioner after which the learned Civil Court directed the petitioner/defendant to submit *vakalatnama* and written statement. However from then onwards the petitioner/defendant remained absent from proceedings. Thereafter, due to administrative transfer of the suit, notice *pervi* was issued to the petitioner/defendant. On 05.10.2015, summons

were again issued to the petitioner/defendant. Subsequently, vide order dated 31.10.2015, the petitioner/defendant was proceeded against *ex parte*.

4. During *ex parte* evidence, the respondent appeared as PW-1. Learned counsel for the respondent/plaintiff recorded his statement and tendered documentary evidence, i.e. Secondary School Certificate (Exh.P-1) issued by the petitioner on 05.12.2014; and birth certificate (Exh.P-2) issued on 07.02.2015 by Union Council Thatha Khail (108), Rawalpindi.

5. On 05.01.2016, the petitioner/defendant filed an application for setting aside the *ex parte* judgment and decree. The respondent/plaintiff contested the said application by filing a written reply on 28.05.2016. Vide order dated 20.09.2016 the learned Civil Court dismissed the petitioner's application to set aside the *ex parte* judgment and decree.

6. The petitioner preferred an appeal against the said order dated 20.09.2016 as well as the *ex parte* judgment and decree dated 03.12.2015. The said appeal was dismissed vide impugned judgment and decree dated 09.02.2017 passed by learned Incharge District Judge, Islamabad-West.

7. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the petitioner/defendant was never served with summons before being proceeded against *ex parte*; that due to lack of proper service of summons, the petitioner could challenge the *ex parte* judgment and decree after acquiring knowledge about the same; that the application to set aside the *ex parte* judgment and decree could have been filed within a period of three years under Article 181 of the Limitation Act, 1908; that learned trial Court did not afford an adequate opportunity to the petitioner/defendant to show that there was just cause for its absence; and that petitioner never refused to receive the summons.

8. Learned counsel for the petitioner further submitted that the impugned *ex parte* judgment and decree are in contravention of law laid down by this Court; that the learned Civil Court permitted the respondent/plaintiff to produce photocopies of documents

which had no evidentiary value; that the learned Civil Court did not summon the official record; that the persons responsible for the custody of the documents were not produced as witnesses; that the respondent/plaintiff produced birth certificate (Exh.P-2) which was not admissible; that the said certificate does not mention the date on which it was issued; that the respondent did not produce the register of births in order to prove that his correct date of birth was 02.06.1997; that no witness was produced from the respondent's college/school in order to testify that the respondent's correct date of birth was not 02.06.1997; and that the concurrent judgments and decrees passed by the learned Courts below are contrary to the law laid down by this Court in the case of Federal Board of Intermediate and Secondary Education Vs. Azam Ali Khan (2017 YLR 906). Learned counsel for the petitioner prayed for the revision petition to be allowed.

9. On the other hand, learned counsel for the respondent submitted that the summons were properly served on the petitioner/defendant; that on 19.06.2015, during the proceedings before learned Civil Court, a memo of appearance was submitted by the petitioner's representative; that on 31.10.2015, despite service of summons the petitioner/defendant did not appear before the learned Civil Court; that since the petitioner did not come up with sufficient cause for its absence at any stage, it was rightly proceeded against *ex parte*; that wrong entry of the respondent's date of birth in the admission form was the result of an inadvertent mistake; that the respondent's correct date of birth, i.e. 02.06.1997 has been correctly recorded in birth certificate (Exh.P-2) issued by Union Council; and that the concurrent judgments and decrees passed by the learned Courts below do not suffer from any legal infirmity. Learned counsel for the respondent prayed for the revision petition to be dismissed.

10. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

11. The relevant facts of the case have been set out in sufficient detail in paragraphs 2 to 6 above, and need not be recapitulated.

12. After the filing of the suit, summons were indeed served on the petitioner. Since the petitioner was aware as to the institution of the suit, a memo of appearance was filed on its behalf on 19.06.2015. At no material stage, did the petitioner repudiate the authority of its counsel who had tendered appearance on its behalf on 19.06.2015. Moreover, the same learned counsel represented the petitioner in the proceedings for the setting aside of the *ex parte* judgment and decree. The onus was on the petitioner to have proved that it was not duly served. No material was brought before this Court to contradict the observation of learned appellate Court that summons were served on 08.06.2015 in the R&I Section of the petitioner/Board.

13. Even after the transfer of the suit to another Civil Court, notice *pervi* and then summons were directed to be issued to the petitioner. The said summons were returned after effecting the service again but the petitioner did not appear before the Court. Therefore, *ex parte* proceedings were initiated against the petitioner. Since the petitioner was served before being proceeded against *ex parte*, the application to set aside the *ex parte* judgment and decree could have been filed within the limitation period of 30 days under Article 164 of the Limitation Act, 1908. The petitioner's application for setting aside the *ex parte* judgment and decree had to be filed within thirty days of the passing of the *ex parte* decree. As against that the petitioner filed the application on 05.01.2016, i.e. <u>almost thirty two days</u> of passing of the *ex parte* judgment and decree.

14. Notwithstanding the fact that the application was barred by limitation, it is even otherwise mandatory for the applicant to have given sufficient cause of his absence. Under Order IX, Rule 13 C.P.C. when an application is moved for setting aside *ex parte* proceeding or *ex parte* decree, the Court must be satisfied that there was sufficient cause for non-appearance of the applicant. In the case at hand, the petitioner's application does not assign sufficient cause which prevented it from appearing before the Court. The petitioner's application on this account merely mentions that "*the defendant was totally unaware from the court*

proceedings against the defendant'. **This cannot constitute sufficient cause in the circumstances of the case since a memo of appearance had already been filed on behalf of the petitioner.**

15. Since I have not been given any reason to interfere with the concurrent orders/judgments passed by the learned courts below, therefore, this revision petition is dismissed. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

*Qamar Khan**

Uploaded By : Engr. Umer Rasheed Dar