

Judgment Sheet

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA),
SWAT.

JUDICIAL DEPARTMENT

R.F.A No.34-M/2015.

JUDGMENT

Date of hearing...09/01/2018.....

Appellant (Dr.Khurshid Ali) By Mr.Akhtar Munir Khan Advocates.....

Respondent (Ihsan Ali) Nemo.....

MUHAMMAD NASIR MAHFOOZ, J:- The instant appeal under section 96 of CPC read with para 10 (8) of the Nizam-e-Adal, Regulation 2009 is filed against the order dated 19.05.2015 passed by learned Civil Judge-II/ Illaqa Qazi, Swat whereby he has dismissed the suit of the appellant in a summary manner without recording any evidence after accepting application of the respondent for rejection of plaint.

2. On 24.10.2017 one Gohar Ali attorney for the respondent appeared in court and requested for adjournment to engage a counsel but today he is absent, therefore, this appeal is being decided after hearing learned counsel for the appellant, as respondent is absent.

3. Appellant had filed a suit for recovery of rupees two crore (20 million) including interest from 1.6.2014

till final settlement of dispute. He has also prayed that a shop namely “Sona Mehal” situated in Mingora Bazar, District Swat, is ownership of respondent but since an agreement has been made between them, therefore, he has a charge to recover his debt from the said shop. The grievance of appellant is that respondent has admitted liability to pay rupees one crore to the appellant vide deed No.1202 dated 26.05.2014 and from 1.6.2014 to 30.06.2014 payment of first installment was agreed and the whole of amount was to be paid in ten months. It is averred that since the respondent has failed to pay the said amount, hence, is constrained to file the instant suit.

4. Respondent submitted written statement and alongwith written statement he submitted an application for rejection of plaint denying his liability.

5. Learned trial court has dismissed the suit simply on the ground that the plaint is signed by the special attorney of appellant and not by the appellant himself and relied on judgment reported as **2012 SCMR 1106**. Learned trial court also held that the suit is barred by Shariah Law as the appellant has prayed for interest in the instant suit.

6. The judgment relied upon by the learned trial court is distinguishable on the point that the same relates

to the suit for preemption wherein a preemptor is bound to prove talabs according to section 13 and, therefore, the non-signing of the plaint by the preemptor himself was considered fatal. In the instant case no such question could be considered fatal for filing a civil suit because it was signed by an agent or representative of plaintiff as per order 3 Rules 1 and 2 of the Code of Civil Procedure. So far as the question of claiming interest being against Sharia is concerned, that can be decided at the final stage after the parties are allowed to produce evidence according to their pleadings, however, the claim of interest is only to the extent of one crore (Ten million) which is half of the amount prayed for, so the question of determination of title of the principal amount was required to be adjudicated upon after the parties were allowed to produce the evidence and thereafter the question of payment of interest would rise.

7. The learned trial court has not even considered the essential ingredients of Order 7 Rule 11 CPC to hold that anyone of them was attracted to the plaint of appellant. For the purpose of applicability of Order 7 Rule 11 CPC a court is legally bound to peruse plaint in isolation without considering the averments raised in the written statement and thereafter the plaint could be

rejected if it is hit by sub-rules (a) to (d) of Order 7 Rule 11 CPC. The learned trial court has passed the impugned order in a very casual manner on his own whims without caring for the relevant provisions of law.

8. In view of the above, this appeal is, therefore, accepted, the impugned order is set aside and the case is remanded back to the learned trial court to decide the same after allowing opportunity to both the parties to produce evidence and then decide the case afresh according to law. Appellant is directed to appear before the learned trial court on 25.01.2018.

Announced.
Dt.09/01/2018.

J U D G E

HON'BLE MR.JUSTICE MUHAMMAD NASIR MAHFOOZ

(A-K-KHAN)