

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR
JUDICIAL DEPARTMENT

C.R.No.224-P/2016.

JUDGMENT

Date of hearing.....19/06/2017.....

Petitioner By Nawabzada Khan Askar Afridi, Advocate.....

Respondent By Mr.Nasir Khan Khalil Advocate

SYED ARSHAD ALI, J:- Through the present revision petition the petitioner has called in question the order dated 02.04.2016 passed by learned Additional District Judge-XIV, Peshawar whereby the appeal of petitioner against the order of Civil Judge-XVII, Peshawar dated 17.03.2016 was dismissed.

2. The essential but brief facts of the case are that the petitioner instituted a suit seeking permanent and mandatory injunctions against the defendants/respondents that the respondents be restrained from interfering in the suit property. It is averred in plaint that the petitioner has been residing in a constructed house situated at Nasir Bagh Road, Mian Khan Ghari near Askari Colony, Tehsil and District Peshawar measuring 6 kanals and 15 marlas comprised of Khasra No.816/1, which he purchased through mutation No.5785 attested on 13.06.2007. Indeed the suit has been filed against the

alleged threatened action of the defendants/respondents of demolishing the suit house. Alongwith the suit, the petitioner also filed an application for interim relief that defendants/respondents be restrained from interfering in the suit house. The suit was entrusted to Civil Judge-XVII, Peshawar which came up for preliminary hearing before the learned Civil Judge on 1.3.2016. The learned Judge while admitting the suit had also granted ad-interim injunction vide order dated 1.3.2016 and issued notice to the respondents/defendants for 12.03.2016. On the following day i.e. 2.3.2016 the defendants/respondents filed an application for early hearing and also submitted before the court their written statement and an application for vacation of stay. In the written statement, the respondents raised serious legal and factual objections and further contended that they have purchased the suit property from one Zar Wali Khan son of Muhammad Hussain through registered deed which was duly incorporated in the revenue record and accordingly mutation No.7064 was attested on 22.03.2013. The defendants have also placed on record the judgment of Additional Sessions Judge-IX, Peshawar dated 24.04.2012 whereby a complaint filed by the present petitioner against Akhtar Hussain u/s 3 of Illegal

Dispossession Act, 2005 was dismissed by the learned trial court relating to the suit property.

3. The learned trial court issued notice to the petitioner/plaintiff on the application filed by the respondents for vacation of stay and the case was posted for 8.3.2016. On 7.3.2016 the present petitioner filed an application before the learned trial court for implementation of the order dated 1.3.2016 and on the said date the petitioner also filed an application for amendment in plaint. Notice of the said application was issued to the respondents/defendants for 8.3.2016. On 8.3.2016, due to the lawyers being on strike, no proceedings could take place as such the matter was adjourned to 12.03.2016. The order sheet dated 12.03.2016 reveals that the learned counsel for the respondents was insisting on arguing the case however, the learned counsel for the plaintiff/petitioner requested time as he was not feeling well, hence, the case was adjourned to 16.03.2016. Again on 16.03.2016, the learned counsel for the petitioner was not available and requested for adjournment, which was allowed by the learned trial court with directions that the case be positively argued otherwise the same will be decided accordingly. On 17.03.2016, once again, the learned counsel for the petitioner did not appear before the court

and sent an application for adjournment wherein it was stated that the senior counsel for the petitioner has gone for 'tableegh'. Faced with such circumstances, the learned trial court recalled the order of ad-interim injunction dated 01.03.2016 due to non-compliance of court order, however, no reasons were given on merit for re-calling the order dated 01-03-2016. It was observed in the order sheet dated 17-03-2016 that the application for temporary injunction shall remain pending and shall be decided on merit. This order of the learned civil court was assailed through appeal before the worthy District Judge, Peshawar which was entrusted to ADJ-XIV, Peshawar. The said appeal came up for preliminary hearing before the learned ADJ on 19.03.2016 and the learned court was pleased to order status quo in the matter. However, on 28.03.2016 the appeal was dismissed in default, which was latter restored on the application of petitioner by the learned ADJ-XIV vide order dated 30.03.2016. It would be pertinent to mention that on 29.03.2016 when the application for restoration of appeal came up for hearing the learned counsel for the petitioner insisted for a status quo order in his favour which was declined by the learned ADJ for the reason that no such application for interim injunction was accompanied with the application for restoration of

appeal. This prompted the learned counsel for the petitioner to move an application to the worthy District Judge, Peshawar for transferring the appeal to some other court, however, the worthy District judge declined the said request. The appeal was finally heard by learned ADJ-XIV, Peshawar who vide impugned order dated 02.04.2016 dismissed the appeal, hence, the present revision petition.

4. The learned counsel for the petitioner contended that the impugned order of learned Civil Judge dated 17.03.2016 whereby he had recalled the order granting status quo is a non-speaking order and has been passed in haste without giving proper opportunity of hearing to the petitioner.

5. On the other hand, learned counsel for the respondents argued that the order of learned Civil Judge was passed on his application filed by him under Order 39 Rule 4 of the Civil Procedure Code, 1908 (“**Code**”) and keeping in view the contumacious attitude of the learned counsel for the petitioner/plaintiff who was unreasonably delaying the matter, the learned trial court had no option but to pass the impugned order. He further contended that the concurrent findings of both the courts below cannot be disturbed in revisional jurisdiction. He

placed reliance on **2012 CLC 415, 2012 CLC 165, 2013 CLC 454, 2013 CLC 548** and **2015 CLC 719**.

Arguments heard and record perused.

6. The procedure and law for grant of interim injunctions has been provided in Order 39 read with section 94 of the CPC 1908 whereas the matter relating to adjournments is being governed by Order 17 of the CPC, 1908. It is an established principle of law that the court, while granting ad-interim injunction, has to see and evaluate prima facie case of the petitioner coupled with other ingredients i.e. irreparable loss to the plaintiff/petitioner in case the ad-interim injunction is refused and whether such refusal will also cause inconvenience to the plaintiff/petitioner. Once the court comes to conclusion that the plaintiff/petitioner has a prima facie case and grants ad-interim injunction, then it will be inappropriate to recall the same order without giving any reasons, and more particularly, when the written statement and other documents are before the worthy court. Indeed, the contumacious conduct of the learned counsel for the petitioner could not be overlooked, however, this does not absolve the worthy trial court to decide the matter in accordance with law. Any order passed in haste or which lacks reasons has always been deprecated by the superior courts. Indeed, the jurisdiction vested even in executive

authority or quasi judicial authority has to be exercised reasonably and with reasons. Hence, the judicial officers are expected to be more cautious and always apply judicial mind while adjudicating upon any matter. Hence, the learned trial court has erred by recalling the order of injunction without recoding reasons. Perhaps what weighed before the worthy trial court, as well as the appellate court is the contumacious conduct of the learned counsel for petitioner. In **Mollah Ejahar Ali Vs. Government of Pakistan** (PLD 1970 SC 173) when the worthy Apex Court was dealing with the matter in which the learned High Court had summarily dismissed the writ petition has observed that;

“To deal with the second contention first, there is no doubt that the High Court’s order which is unfortunately perfunctory gives the impression of a hasty off-hand decision which, although found to be correct in its result, is most deficient in its content. If a summary order of rejection can be made in such terms, there is no reason why a similar order of acceptance saying “there is considerable in the substance in the petition which is accepted”, should not be equally blessed. This will reduce the whole judicial process to authoritarian decrees without the need for logic and reasoning which have always been the traditional pillars of judicial pronouncements investing them with their primary excellence of propriety and judicial balance. Litigants who bring their disputes to the law courts with the incidental hardships and expenses involved do expect a patient and a judicious treatment of their cases and their determination by proper orders. A judicial order must be a speaking order manifesting by itself that the court has applied its mind to the resolution of the issues involved for their proper adjudication. The ultimate result may be

reached by a laborious effort and on the contrary discloses arbitrariness of thought and action, the feeling with the painful results, that justice has neither been done nor seem to have been done is inescapable. When the order of a lower court contains no reasons, the appellate court is deprived of the benefit of the views of the lower court and is unable to appreciate the process by which the decision has been reached. In this case the learned counsel naturally criticized the High Court's order for its utter barrenness but he was definitely at an advantage in presenting the various aspects of his argument without any hindrance offered by the ineffectiveness of the impugned order."

Similarly, while the Hon'ble Lahore High Court dealing with almost similar issue through its judgment reported as Muhammad Inayat Vs. Member (Revenue) Board of Revenue Punjab, Lahore and three others (1997 MLD 790) has held, "While vacating stay order during pendency of revision, junior counsel for petitioner who admittedly was present was not heard. Petitioner was thus, condemned unheard." In Mst.Parveen Begum VS. Habib Gul & another (1997 MLD 2473) it was held that;

"the mechanical findings based upon surmises and conjunctures are not warranted in law as the courts, created under the law and rules, are bound to pass judicial orders and their findings must be sustainable on record. Courts being servants of law must act within parameter of law and rules, which created and vest authority in such courts. Where courts pass wrong order they travel outside its jurisdiction and act as despots and such course is not permissible in system for dispensation of justice."

The respondents had rightly filed the application under Order 39 Rule 4 of the Code for vacating the stay

order, indeed in any case where the court grants ex parte ad-interim injunction and the defendant feels that the said order has caused great hardship or inconvenience to him, his remedy lies in filing application under order 39 Rule 4, however it is incumbent upon the court while deciding the said application to pass a judicial and well-reasoned order on the said application.

In view of above, the impugned orders are not sustainable. Hence this revision petition is accepted on cost of rupees 10,000/- and the impugned orders of both the courts below are set aside. The parties are directed to maintain status quo. The application of Respondent under Order 39 Rule 4 shall be deemed pending and the learned trial court shall decide the applications strictly in accordance with law. The parties are directed to appear before the learned trial court on 3.7.2017 on which date the learned trial court shall finally decide the applications and if either party or their counsel do not appear before the learned trial court on the date fixed, then the learned trial court shall proceed in accordance with law.

Announced.
Dt. 19.06.2017.

J U D G E

(A-K-KHAN)