IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN

GILGIT.

C.P.L.A No.88/2014.

Before :-

1. Mr. Justice Raja Jalal-ud-din, Acting Chief Judge.
2. Mr. Justice Muzaffar Ali, Judge.

1.Mst.Raqia Begum widow of Muhammad Ramzan r/o Partab Pura Gilgit. 2.Mst.Khurshida Begum widow of Rahim Baksh r/o Hospital Colony Gilgit. 3. Mst.Zareena Begum widow of Abdul Aziz r/o Konodas Colony Gilgit 4. Mst.Rajo Begum widow of Ghulam Muhammad r/o Majini Mohallah Gilgit. 5. Abdul Rehman s/o Mukhtar Mir r/o Konodas Gilgit.

Petitioners

Versus

Safdar Ali s/o Dr.Sadiq Ali late through LRs (i) Aurangzaib (ii) Amjad Ali (iii) Asif Ali (iv) Sadat Ali (v) Meraj Ali r/o Jutial Gilgit.

2. Abdul Qavi s/o Muhammad Ishaque 3. Muhbat Khan s/o Khalifa Hurmat 4. Ibrar Hussain 5. Iqbal Hussain sons of Talib Shah Tenants/shop Keepers Jangi Bazar Gilgit.

Respondents

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF GILGIT-BALTISTAN (EMPOWERMENT & SELF GOVERNANCE ORDER) 2009,AGAINST THE IMPUGNED JUDGMENT/ORDER DATED 06-06-2014 PASSED BY THE CHIEF COURT GILGIT-BALTISTAN.

Present :- Muhammad Hussain Shahzad Advocate on behalf of

Petitioners.

Date of Hearing :- 05-05-2015:-

JUDGMENT:-

Mr.Justice Muzaffar Ali J..... This petition for leave to appeal has been directed against the order dated 06-06-2014 passed by a learned single bench of the Chief Court Gilgit-Baltistan in revision petition No.42/2011. The learned single Judge of the Chief Court exceeded the revision petition submitted by the respondents in the instant petition and set, the impugned decree by the learned lower courts respectively in the suit No.157/2011, aside. Hence this petition before this court against the impugned order.

2. The brief facts behind this petition are as such that, the respondents in this petition filed a suit before the court of learned Civil Judge Gilgit, against the present petitioners, disputing an evacuee property situated at Saddar Bazaar in Gilgit. The parties to the suit reached up to the Chief Court taking legal points of "**Jurisdiction**" and **rejection of the plaint**" while the real matter in issue remained before the trial court awaiting. Lastly the case was remitted to the trial court for adjudication on its merits.

3. The learned trial Judge after receiving the file ordered issuance of summons to the defendants on 24-11-2007 to attend the court and adjourned the case for 05-03-2008 and the date being local holiday, the case was put up before the court on 06-03-2008, the day next to the holiday. On the said day, the order sheet was conducted by the Reader of the trial court as such it can be presumed that, the presiding officer was on leave or was busy in respect of other cases, because no reason is available in the order sheet as to, why the order sheet was maintained by the Reader of the court.

4. The case was again conducted by the Reader of the Court on 25-04-2008, and adjourned to 02-06-2008. On the appointed date the Presiding Officer conducted the case himself and maintained the order sheet quoted **"presence as previous put up on 01-09-2008 for further proceeding"** unquoted, the order sheet discloses nothing about, what kind of proceedings, the learned Presiding Officer had in his mind. The point is still stands secret as on the next appointed date the case was conducted by the Reader of the Court and was adjourned for 20-09-2008.

5. On 20-09-2008 the learned Presiding Officer himself conducted the case and pleased (**in administrative term**) to dismiss the suit for default. The order sheet dated 20-09-2008 is reproduced hereunder "**suit called for**

hearing, plaintiff absent defendant No.1 to 6 not in attendance, defendant No.7 to 12 through D.A. present. Keeping in view the absence of plaintiff the suit stands dismissed for non prosecution file."

6. We heard the learned counsel on the petition. He raised three points to assail the impugned order passed by the learned single Judge of the Chief Court as (a) the application under **Order 9 Rule 9 C.P.C.** submitted by the present respondents before the learned trial court for restoration of the suit is miserably time barred as the same has been submitted after lapse of three years from the date of passing the dismissal order by the trial court and the courts below have concurrently held the application to be time barred under **Article 163 of the LIMIATION ACT (ACT IX OF 1908) (b)** the present respondents have failed to state and prove " **sufficient cause"** prescribed in **Order 9 rule 9 C.P.C.** as pre-requisite to restore a suit dismissed in default. (c)the date fixed was a date of **"hearing"** but the learned single Judge of the Chief Court has erred in law by declaring the date not fixed for **"hearing.**"

7. We have gone through the relevant provisions of law in this case as the same has reached before us with diversion views of the courts below. The learned Civil Judge as well as the learned District Judge concerned is at same page while the learned single Judge of the Chief Court disagrees with the view taken by the lower courts and discarded. We before seconding any legal view either taken by the learned Single Judge of the Chief court or by the learned courts below, deem it proper to interpret the **Order 9 Rule 8 C.P.C.** with the help of case law passed by the superior judiciary in this regard. **Order 9 rule 8 C.P.C.** applies where none of the plaintiffs appears on the first date of hearing while Order 17 rule 2 applies to the day to which hearing of the suit is adjourned but **Order 17 rule 2 C.P.C.** provides the action of the court under **order 9 C.P.C**. Perusal of **Order 9 rule 8** and **Order 17 rule 2 C.P.C.** inclines us

legally to hold that, Order **9 rule 8 C.P.C.** is mandatory in its nature while **Order 17 rule 2** gives a discretion to the courts to take any action under Order 9 or otherwise to make any order the courts think fit in exercise of their discretion. Some words or legal phrases incorporated jointly **in order 9 rule 6,8,9,13** and **order 17 rule 2** having significance in law. The words are reproducing and elaborating under their titles as ;

Date of hearing :- The word date of hearing is pre-requisite to exercise jurisdiction of the courts to pass an order under 9 rule 6,8 and order 17 rule 2 C.P.C. The courts have no jurisdiction to pass an ex-parte decree against the defendants under order 9 rule 6 and dismissal of the suit under order 9 rule 8 against the plaintiffs for their absence from the court respectively. The Court even cannot take any action under order **17 rule 2 C.P.C.** unless the date was fixed by the presiding officer himself for " hearing" of the suit in the last previous order sheet of the case. The word "hearing" has not been defined in the C.P.C. but superior courts have held as illustrated (a) a date fixed for framing of issues (b) a date fixed for adducing of evidence (c) fixed for final arguments. The date fixed for filing of written statement or filing of replication are not dates fixed for hearing and likewise a date fixed for hearing of an interim issue arisen during pendency of the suit also does not come within the ambit of hearing of the case. The Courts are unanimous on the point that, a dismissal order of a suit or an ex-parte decree passed when the suit was not "**called on for hearing**" the orders if passed are without jurisdiction and void.

First date of hearing:- The term hearing in order 9 rule 8 C.P.C. refers to the first hearing after issuance of the summons to the defendants, Relied **on PLD 1990 page 813.**

Adjourned date of hearing :- The dates come after the first date of hearing of the suit, when the courts adjourned the matter for reasons to be recorded by the courts in the order sheet.

Sufficient Cause :- The party requires to show sufficient cause for the satisfaction of the court when the party has been taken into account against by the court for his absence when the " suit was called on for hearing". No application under order **9 rule 9 and 13 C.P.C.** will be entertained or exceeded to unless the same application mentions a **sufficient cause** and proves the same for absence of the party and unless the court comes to the conclusion that, the cause is sufficient. The application must not only requires to show **sufficient cause** but it must be within time under **Article 163 or 164 of Limitation Act** respectively. **Sufficient cause is required to be established only when the impugned order has been passed when the suit was "called on for hearing".**

8. The superior courts are at consonance with the point that, order 9 rule 9 and 13 apply only to the applications when the courts passed ex-parte decree or dismiss the suit in default if the parties respectively remained absent on the date, " when the suit is called on for hearing". Otherwise orders of dismissal of the suit or ex-parte decrees passed are without jurisdiction and powers as such do not come within the ambit of **order 9 rule 9 and 13 C.P.C. Article 163 and 164** of the Limitation Act also do not apply to such nullity orders. The following case law has helped us to hold the above interpretation in respect of the relevant provisions in the case in hand. (1) 1991 SCMR page 1104 (2) 1993 SCMR page 1949 (3) SCMR page 707 (4) 1997 SCMR page 1986 (5) 1978 SCMR page 96 (6) 1993 CLC page 926 (7) 1987 SCMR page 733 (8) 1991 MLD page 63 (9) 1983 SCMR page 1092 and 2012-14 GBLR 172.

9. The courts below ought to be very careful about the word **"hearing"** before taking any action against a party makes himself absent from the courts. The courts should have taken legal action against, under **Order 9 rule 9** when the date fixed was definitely a "**date of hearing**" otherwise the courts require to proceed the matter irrespective of the absence of any party to the suit, and adjudicate the matter finally on merits, asking the party present to defend or to prove the case ex-parte. The courts below require even to issue fresh notice to the party absent from the court if the circumstances of the case so demand.

10. The ex-parte decrees and orders of dismissal of the suit passed by the courts, when the "**suit was not called for hearing** "are being redressed and recalled by the courts in exercise of their inherent jurisdiction under **Section 151 C.P.C**. either on their own motion or in response to an application under **section 151 C.P.C**. submitted by the aggrieved party and limitation for redressing such orders passed without jurisdiction runs under **Article 181 of the Limitation Act** which is three years from the date of occurring the right to the aggrieved party.

11. In the instant case we are really shocked after going through the order sheets maintained by the presiding officer and by the Reader of the court. We are aware of the fact that, the learned Civil Judges in Gilgit-Baltistan are burdened with the load of judicial work but even then, we could not imagine such negligence and carelessness from judicial officers, in exercise of their judicial duties in administration of justice in accordance with law otherwise the confidence of the litigants public will be erode from the courts of law. The order sheets maintained in the courts are having legal significance therefore, it is expected, from judicial officers and even from officers of the

court, whom the law has authorized to maintain the order sheets on behalf of the presiding officers must be vigilant.

12. In the case in hand the order sheets maintained are too short, ambiguous and apparently reveal that, the presiding officer and the Reader both were in a hurry and were not in a state of mind to maintain the justice in accordance with law between the parties. The presiding officer as well as the Reader of the court was unaware of the importance of the order sheets in judicial matters and they acted like administrative officers. The presiding officer has used the word **"suit called for hearing"** in the order sheet dated 20-09-2008, whereby, suit has been dismissed for non prosecution, without going into the last previous order sheet dated 01-08-2008 which was maintained by the Reader of the court and consisting of a short one line. It has not been fixed either for framing of issues or for adducing of evidence. Neither the case was fixed for final arguments nor it can be fixed for **"hearing**" of the suit because the order sheet was maintained by the Reader of the court and the Reader under law is just authorized to adjourned the case in absence of presiding officer and he is not authorized to fix the case for **"hearing"** of the same.

13. We again shocked how the learned District Judge ignored the above stated legal dictum when the impugned dismissal order by the learned trial court was brought to his judicial notice in the first appeal. The learned District Judge instead of curing the legal error made by the trial court, agreed with the learned trial court and the aggrieved party is to travel up to this court for getting remedy against this legal error.

14. The order, dated 02-09-2008, whereby the trial court dismissed the suit of the present respondents, is without jurisdiction and void ab-initio as such it cannot be allowed to stand, as the date was not "**called on for hearing"**

therefore, the learned single Judge of the Chief Court has very rightly recalled the orders passed by the courts below and we are in agreement with him as such this petition for leave to appeal is refused to grant and the impugned order is maintained. The case is remitted back to the trial court with the direction that, the trail court to issue notice to the parties to attend the court, fixing any date in the summons and proceed the suit to adjudicate the same on merits. No orders as to cost.

Announced:-

05-05-2015

Acting Chief Judge

Judge

Whether the case is fit to be reported or not ?