

Civil Revision No.1998 of 2003

TEHSIL COUNCIL KAMALIA VERSUS BOOTA MASIH etc.

29.09.2010 Mian Muhammad Athar Advocate for Petitioner.
Mr. Muzaffar Iqbal Chaudhary Advocate for
Respondent No.1.

This civil revision is directed against the judgment dated 25-6-2002, passed by the learned Additional District Judge, Toba Tek Singh, whereby, an appeal instituted by the petitioner against the judgment and decree dated 5-11-2001, passed by the learned Civil Judge, Toba Tek Singh, was returned to the petitioner on the ground that the learned Additional District Judge does not have the pecuniary jurisdiction to hear the appeal. The petitioner then preferred this civil revision before this Court on 24-9-2002 against the judgment dated 25-6-2002 of the learned Additional District Judge.

2. At the very outset, the learned counsel for the contesting respondent No.1 has raised an objection that the civil revision is time-barred and that the judgment passed by the learned Additional District Judge is correct; the appeal instituted by the petitioner before the Additional District Judge, Toba Tek Singh was not properly instituted and the judgment dated 25-6-2002, passed by the learned Additional District Judge is legally and factually correct.

3. The learned counsel for the petitioner conversely has

contended that by virtue of the Punjab Civil Courts Ordinance (Amendment) Act, 1986, the pecuniary jurisdiction of learned District Judge was enhanced from Rs.50,000 to Rs.2,00,000 and subsequently vide Ordinance No. LV of 2002 promulgated and enforced on 26-9-2002, the jurisdiction of the learned District Judge/Additional District Judge has now been enhanced to Rs.25,00,000, therefore, the instant civil revision be accepted and the appeal presented by the petitioner before the learned Additional District Judge be ordered to be decided on merits.

4. Replying to the objection of limitation raised by the learned counsel for the respondent No.1, it is contended by the learned counsel for the petitioner that the judgment dated 25-6-2002 was passed by the learned Additional District Judge and the petitioner applied for obtaining certified copy of the said judgment the same day, which was delivered to the petitioner on 3-7-2002 and that the civil revision was presented on 24-9-2002 which is within time.

5. I have considered the arguments of the learned counsel for the parties and have perused the record.

6. Insofar as the objection of limitation being raised by the learned counsel for the respondent No.1 is concerned, the petitioner applied for certified copy of the judgment dated 25-6-2002 the same day and the certified copy was delivered to the petitioner on 3-7-2002. The learned

counsel for the respondent No.1 has contended that a fix period of 90 days is provided in preferring civil revision under section 115 of C.P.C.

The attention of the learned counsel for the respondent No.1 was drawn towards second proviso of section 115 of C.P.C., wherein it has been provided that a copy of the judgment passed by the Subordinate Court has to be supplied to the petitioner by the Court itself within three days of passing of the judgment. When asked as to whether the learned Additional District Judge has supplied the copy of the judgment dated 25-6-2002 to the petitioner, the learned counsel for the respondent No.1 expressed his ignorance and said that it has to be established by the petitioner whether it was supplied to the petitioner within three days or not.

7. The objection of limitation has been raised by the learned counsel for the respondent No.1 and it was obligatory for the learned counsel for the respondent No.1 to establish that the certified copy of the judgment was delivered within three days to the petitioner in order to enable him to prefer a civil revision before this Court against the judgment dated 25-6-2002 within the next ninety days.

No documentary proof of this fact has been produced before me, therefore, it is presumed that the learned Additional District Judge did not supply the certified copy of the impugned judgment dated 25-6-2002 to the petitioner

in order to enable him to prefer a civil revision against the judgment dated 25-6-2002, therefore, the objection of limitation raised by the learned counsel for the respondent No.1 is not sustainable. The petitioner presented the instant civil revision after obtaining the certified copy on 3-7-2002 and has presented this civil revision on 24-9-2002 before this Court, therefore, it was filed within 90 days of the obtaining of certified copy of the impugned judgment. This civil revision is treated as within time.

8. In support of the other contention that the appeal presented by the petitioner before the learned Additional District Judge was not properly constituted as according to the learned counsel for the respondent No.1, the valuation in a suit for rendition of accounts has to be determined in accordance with the decree to be passed by the court and in this context the learned counsel has relied upon judgment reported as *Farman Ali Dewan and another v. Munsur Ali and others* (PLD 1962 Dacca 214) and *Government of Sindh and others v. Abdul Majeed and another* (1990 CLC 1891).

9. The learned counsel for the petitioner has replied that the valuation for the purposes of jurisdiction was fixed by the petitioner in Paragraph No.8 of the plaint to be Rs.400. Although, it was further stated in paragraph No.8 that after the determination of amount recoverable the proper court-fee shall be paid by the petitioner yet as per the learned counsel the valuation stated in the plaint as Rs.400 shall be the

determining factor for the purpose of selecting the forum of appeal for the petitioner.

10. I have considered the arguments on this aspect also. The valuation of the learned District Judge/Additional District Judge was enhanced from Rs.50,000 to Rs.2,00,000 vide Punjab Civil Courts Ordinance (Amendment) Act, 1986. Later on, the valuation for the purposes of pecuniary jurisdiction of the learned District Judge has been enhanced from Rs.2,00,000 to Rs.25,00,000 by virtue of Ordinance No.LV of 2002 enforced since 26-9-2002. As the valuation of the learned District Judge/Additional District Judge has now been enhanced to Rs.25,00,000 and the honourable. Supreme Court of Pakistan in the reported judgment Bashir v. Wazir Ali (1987 SCMR 978) has laid down that the matter of amendment of the law with respect to the pecuniary jurisdiction of the Civil Courts is a procedural matter and the amendment will take retrospective effect, therefore, in view of the judgment passed by the Apex Court, the impugned judgment dated 25-6-2002, passed by the learned Additional District Judge is set aside. I direct that the appeal instituted by the petitioner before the learned Additional District Judge shall be deemed to be pending there which shall be decided in accordance with law on merits. The instant civil revision is accepted and disposed of with no orders as to costs.

(NASIR SAEED SHEIK)
Judge