

R.S.A.No.88 of 2004

Islamic Republic of Pakistan etc.

M/s. M. Faheem Haider and
Company through CE, Okara

**15.12.2011 Mr. Azar Latif Khan, Deputy Attorney General.
Mr. Riaz Karim Qureshi, Advocate for the respondent.**

The appellants have assailed the judgment and decree dated 23.2.2004 through the instant R.S.A.

2. Briefly stating the facts of the case are that the respondent instituted a suit for recovery of an amount of Rs.16,89,325/-against the appellants before the learned Civil Judge Okara which suit was dismissed vide judgment and decree dated 24.6.1992 of the learned Civil Judge. The respondent preferred Civil Appeal No.49/2004 against the judgment and decree dated 24.6.1992 of the learned Civil Judge. This appeal was allowed by the learned Additional District Judge Okara vide judgment and decree dated 23.2.2004 and the judgment and decree of the learned Civil Judge was set aside and the suit of the respondent was decreed for a sum of Rs.16,89,325/- alongwith a compensation @ 12% per annum since 30.6.1985. Hence this R.S.A. against the judgment and decree dated 23.2.2004 of the learned Additional District Judge/first appellate court.

3. It is contended by the learned Deputy Attorney General that the learned first appellate court has set aside the judgment of the learned Civil Judge without discussing the evidence produced by the parties. It is argued that the parties produced oral as well as documentary evidence before the learned trial court and the learned Senior Civil Judge

dismissed the suit of the respondent through the judgment and decree dated 24.6.1992. At the appellate stage it was obligatory for the first appellate court to have discussed the entire evidence produced by the parties and then to have decided the fate of the appeal. The learned first appellate court only referred to one document Ex.P7 and decided the matter in favour of the respondent. The learned Deputy Attorney General has thus prayed for setting aside of the judgment and decree of the learned first appeal court and remand of the case for decision afresh in accordance with law directing the first appellate court to discuss the evidence meet the points raised by the learned Civil Judge and then decide the fate of the appeal.

4. The learned counsel for the respondent has contended that only Ex.P7 was the relevant document which has been discussed by the learned first appellate court for acceptance of the appeal.

5. I have considered the arguments of the learned counsel for the parties and have perused the contents of the judgment and decree passed by the learned first appellate court dated 23.2.2004.

6. Para-6 of the judgment points out that the learned Additional District Judge just discussed the contents of the written statement and document Ex.P7 and thereafter accepted the appeal. It is a matter of record that two witnesses were produced by the respondent alongwith documents Ex.P1 to P9, whereas the defendants/appellants produced DW-1 with record and document Ex.D1.

7. The right of appeal against the judgment and decree of the civil court is a statutory right and the litigants have legal right to claim the decision of the appeal in accordance with law after discussing the evidence produced by the parties

by the learned first appellate court. The learned Additional District Judge did not comply with this requirement of law. Reliance in this respect is placed upon the judgment reported as **CH. MUHAMMAD SHAFI VS. SHAMIM KHANUM (2007 SCMR 838)** wherein the Hon'ble Supreme Court of Pakistan has laid down the law at page 841 of the judgment in the following manner:-

“It is a settled law that First Appellate Court has right to reverse the finding/conclusions of the trial Court while exercising power under section 96 of the C.P.C. subject to the condition that First Appellate Court has to meet the reasoning of the trial Court in the first instance and thereafter reappraise the evidence on record while reversing the finding of the trial Court as law laid down by this Court in Madan Gopal's case PLD 1969 SC 617.”

The manner in which the learned Additional District Judge has accepted the appeal of the respondent through the impugned judgment and decree has resulted into miscarriage of justice therefore is not sustainable in the eye of law. Therefore the impugned judgment and decree of the learned first appellate court is set aside and the matter is remanded to the learned District & Sessions Judge Okara for deciding the appeal himself after hearing both the parties within a period of two months from the date when a copy of this judgment is presented before him. The RSA is allowed leaving the parties to bear their own costs.

**(NASIR SAEED SHEIKH)
JUDGE.**

•AMJAD•

APPROVED FOR REPORTING

