

Form No. HCJD/-121

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.2124 of 2015
Muhammad Riaz and another
Versus
Ahmed Bakhsh and others

Sr. No. of order/ proceedings	Date of Order/ proceedings	Order with signature of Judge and that of parties or counsel, where necessary
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07.05.2018 Rai Muhammad Hussain Kharal, Advocate for the petitioners

Through the instant civil revision, the petitioners have challenged the order and decree dated 24.07.2013 passed by the learned trial Court whereby the suit for declaration filed by them against the respondents/defendants has been dismissed on the basis of special oath administered by Muhammad Yar, witness of the respondents/defendants as per offer and acceptance as well as judgment and decree dated 14.04.2015 passed by the learned Addl. District Judge, Bhalwal Camp at Kot Momin whereby the appeal preferred by the petitioners has been dismissed.

2. Heard at length and available record has been gone through.

3. Perusal of record goes to make it diaphanous on 17.07.2013, the petitioner Muhammad Riaz alongwith learned counsel for the petitioners, when the suit was fixed for evidence of the respondents/defendants, appeared before the learned trial Court and made an offer for decision of the suit on the basis of special oath of Muhammad Yar, one of the witness of the respondents/defendants on Holy Quran, which statement was reduced into writing by the learned trial Court and that statement was thumb marked/signed by Muhammad Riaz and also by the learned counsel for the petitioners. Thereafter,

Muhammad Yar, witness of the respondents/defendants while present in the Court alongwith learned counsel for the respondents accepted the said offer and got his statement recorded, where-after in response to the same he administered special oath on Holy Quran and his statement was also recorded by the learned trial Court, who deposed that *Ghulam Muhammad, predecessor of the plaintiffs, with his free will appeared before the Revenue Officer of the area and got his statement recorded that he had sold the disputed property to defendants No.1 and 2 and he had received Rs.100,000/- out of the settled amount in his presence and for remaining sale consideration he, in my presence, stated that he had received the same and had sold the land; however, remaining amount was not paid in my presence.* On such statement, Muhammad Riaz and learned counsel for the petitioners/plaintiffs got their statements recorded that suit be decided in light of the statement of Muhammad Yar, witness. After recording statements of the parties, the learned trial Court adjourned the case for further proceedings for 24.07.2013 and on the said date proceeded to dismiss the suit instituted by the petitioners/plaintiffs. There is nothing on record to suggest that the offer for decision of the suit on special oath administered by Muhammad Yar witness was made under some coercion or compulsion by the petitioners, rather it appears that same was out of free will and consent. I would like to reproduce sections 8 to 11 of the Oath Act, 1873, here, which are relevant to the peculiar facts and circumstances of the case in hand, which run:-

“8. Power of Court to tender certain oaths.—If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn

affirmation in any form common amongst, or held binding by persons of the race or persuasion to which he belongs and not repugnant to justice or decency and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

9. Court may ask party or witness whether he will make oath proposed by opposite Party.— *If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:*

Provided that no party or witness shall be compelled to attend personally in court solely for the purpose of answering such question.

10. Administration of oath if accepted.— *If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.*

11. Evidence conclusive as against person offering to be bound.— *The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.*”

Meaning thereby the learned trial Court has observed all the formalities provided under sections 8 to 11 of the Oaths Act, 1873 and has strictly followed the said provisions as is evident from the proceedings conducted by it, as the proceedings for offer, acceptance and administration of oath were carried on 17.07.2013, whereas the learned trial Court, decided the matter on 24.07.2013; during the intervening period from 17.07.2013 to 24.07.2013, the petitioners did not agitate the matter, contending the same a result of fraud and misrepresentation or of coercion but kept mum and when the proceedings were finalized through the impugned order and decree, the petitioners woke up from deep slumber and agitated the matter by filing appeal; in this case principle of approbate and reprobate fully attracts and the learned appellate Court has rightly dismissed the appeal, because Article 163 of the Qanun-e-Shahadat Order, 1984 is different from the provisions of sections 8 to 11 of the Oaths Act, 1873, as Article 163 provides:-

“163. Acceptance of denial of claim on oath: (1) *when the plaintiff takes oath in support of his claim, the Court shall, on the application of the plaintiff, call upon the defendant to deny the claim on oath.*

(2) *The Court may pass such orders as to costs and other matters as it may deem fit.*

(3). Nothing in this Article applies to laws relating to the enforcement of Hudood or other criminal cases.”

Bare reading of this provision of Law makes it vivid that an initiative has to be taken by the plaintiff, who in first stance has to take an oath in support of his claim where-after on his request the Court has to call upon the other side to refute the said statement of the plaintiff on oath and it is mandatory for the Court to pass any order in the light of the said statements of the parties; but in the present case, the petitioners did not make an offer for administering special oath as provided in Article 163 of the Qanun-e-Shahadat Order, 1984, rather, on the offer of the petitioners, one Muhammad Yar witness, administered oath in the light of the mutual agreement of the parties and said mutual consent is the basic theme of above referred provisions of the Oaths Act, 1873.

Here this question also loses its significance that the petitioner Muhammad Riaz could not understand the consequences of the offer so made by him, because, if the position was as such, the matter would have been agitated during the intervening period i.e. from 17.07.2013 to 24.07.2013, but no such exertion was made by the petitioners. Thus, after accomplishment of the process in response to the offer, the petitioners could not step-back or resile, because once an offer made by one party has been accepted by the other party and the same is acted upon, they cannot squirm/back out from the output thereof as such offer and acceptance would be an agreement of binding nature.

4. Pursuant to the above discussion, it is held that the learned counsel for the petitioners could not point out any

illegality or irregularity as well as wrong exercise of vested jurisdiction, alleged committed by the learned Courts below while passing the impugned order, judgment and decrees, warranting interference by this Court. Resultantly, while placing reliance on Attiquallah v. Kafayatullah (1981 SCMR 162), Nazir Ahmad v. Mahmood Ahmad and others (1984 CLC 2658-Lahore) and Abdul Khaliq v. Gul Faraz (PLD 2011 Peshawar 112), the civil revision in hand being without any force and substance stands dismissed *in limine*.

SHAHID BILAL HASSAN
Judge

M.A.Hassan