IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE YAHYA AFRIDI
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO.2351 OF 2019
(Against the Judgment dated 10.04.2019 passed by the Lahore High Court, Multan Bench in W.P. No.6785 of 2011)

Kh. Muhammad Fazil ....Petitioner

VERSUS

Mumtaz Munnawar Khan Niazi (decd.) thr. L.Rs. & another ...Respondents

For the Petitioner: Mr. Mahmood Ashraf Khan, ASC
Chaudhry Akhtar Ali, AOR

For Respondents: Mr. Aftab Alam Yasir, ASC
Syed Rifaqat Hussain Shah, AOR

For Respondent No.2: Not represented

Date of Hearing: 17.10.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Petition for leave to appeal is directed against the Judgment dated 10.04.2019 passed by the Lahore High Court, Multan Bench ("**High Court**") in W.P. No.6785/2011 whereby the Writ Petition filed by the petitioner was dismissed.

2. The transitory facts of the case are that a Civil Suit for declaration was filed by the petitioner/plaintiff on 25.07.2007. After receiving permission, the plaint was subsequently amended. The respondent No.1/defendant filed his written statement on 28.05.2008, and thereafter on 05.09.2009 he also filed an application under Order VII, Rule 11 of the Code of Civil Procedure, 1908 ("**CPC**") for rejection of the plaint due to non-payment of the requisite court fee. The learned Trial Court *vide* Order dated 27.04.2010 ordered the petitioner to pay a court fee of Rs.7500/- by the next date of hearing, failing which the plaint would be deemed as rejected. Thus the Trial Court disposed of the said application and fixed the case for 13.05.2010, however on

that date, without any request, the learned Trial Court granted the petitioner a last opportunity to deposit the court fee. The respondent No.1, being aggrieved by the Order dated 13.05.2010, filed a Revision Petition and the learned Revisional Court, *vide* judgment dated 11.02.2011, rejected the plaint which was challenged before the learned High Court by means of W.P. No.6785/11, but the said Writ Petition was also dismissed on 10.04.2019 by the learned High Court.

3. The learned counsel for the petitioner argued that the impugned judgments passed by the learned High Court and the learned Revisional Court both misinterpreted the Order of the learned Trial Court. He further argued that a perusal of the Order dated 27.04.2010 clearly postulates that for the submission of court fee and framing of issues, the date was fixed as 13.05.2010. It is not the spirit of the law that, when the Court has directed the fixation of court fee on the plaint and to that end a specific date has been mentioned, then the same Court has no power under Section 148, CPC for enlargement of time. It was further averred that the Order dated 13.05.2010 depicts that the learned Trial Court has rightly exercised its power in accordance with the law as provided in Sections 148 and 149, CPC. He further argued that due to the ailment of the petitioner he could not contact his lawyer, however in compliance with the Order dated 13.05.2010 granting the first extension, the petitioner purchased the court fee on 21.05.2010 and submitted the same in the Court on 24.05.2010 and the Revision petition was filed on 22.05.2010.

4. The learned counsel for the respondent No.1 argued that *vide* Order dated 27.04.2010, the learned Trial Court valued the suit for the purpose of court fee and jurisdiction and asked the petitioner to pay a Court fee of Rs. 7500/- on the plaint with the rider that, in case of non-compliance, the plaint would be deemed as rejected. It was further argued that no application for extension of time or enlargement of time was filed by the petitioner, rather the learned Trial Court, on its own motion, extended the time *vide* Order dated 13.05.2010, which is an illegal order. He further argued that no justification has been provided in this Civil Petition by the petitioner for failing to affix the court fee within the stipulated time. He added that the Order dated 27.04.2010 had attained finality, and even in the Revision Petition no proper defence was taken regarding any disability which prevented the petitioner from affixing the court fee within time. It was further avowed that the petitioner still has the right to file a fresh suit in terms of Order VII, Rule 13, CPC subject to the period of limitation.

5. Arguments heard. The crux of the impugned judgment passed by the learned High Court is that the Order dated 27.04.2010 of the learned Trial Court allowing time to make the court fee deficiency good was passed with the rider that, in case of non-payment of court fee by the next date of hearing, the plaint would be deemed as rejected. According to the learned High Court, on 13.05.2010, due to non-payment of court fee in compliance of Order dated 27.04.2010, the *lis* was no longer pending before the learned Trial Court, thus it could not extend the time for depositing the Court fee as it had become *functus officio*. It was further held that the petitioner did not make any request for extension of time for depositing the court fee. The learned High Court did not find any jurisdictional defect or legal infirmity in the impugned judgment passed by the learned Revisional Court, hence dismissed the Writ Petition.

6. Now we turn our attention to the Order dated 27.04.2010 whereby the learned Trial Court disposed of the application moved under Order VII, Rule 11, CPC for rejection of plaint on account of the deficiency in the court fee stamps, with the conditional direction to the petitioner/plaintiff to pay the court fee of Rs.7500/- by the next date of hearing, failing which the plaint would be deemed as rejected. The matter was adjourned to 13.05.2010 for submission of court fee and settlement of issues. The Order dated 13.05.2010 neither specifies whether the petitioner complied with the direction to pay the court fee or not, nor is any reason incorporated which might have been provided by the petitioner for non-compliance. The said Order does not even demonstrate whether any request for extension of time for the payment of Court Fee was made, either orally or in writing, and the Court Order itself accentuates that no miscellaneous application was submitted; right to effect was closed but a last opportunity was granted for depositing the court fee, without providing any time frame. In tandem, fourteen issues were also settled with a further direction to submit the list of witnesses within seven days and the case was adjourned for the evidence of the petitioner/plaintiff.

7. Before moving ahead, it is expedient to lay out the distinctive features and characteristics of Section 148 as compared to Section 149, CPC. The provision for enlargement of time is assimilated under Section 148, CPC which articulates that where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by the CPC, the Court may, in its discretion from time to time, enlarge

such period, even though the period originally fixed or granted may have expired. Whereas Section 149 deals with the power to make up the deficiency of court fee which elucidates in a translucent stipulation that where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

8. It is visible from Section 149, CPC that it an exception to the command delineated under Sections 4 and 6 of the Court Fees Act, 1870 ("**Court Fees Act**"). The exercise of discretion by the Court at any stage is, as a general rule, expected to be exercised in favour of the litigant on presenting plausible reasons which may include *bona fide* mistake in the calculation of the court fee; unavailability of the court fee stamps; or any other good cause or circumstances beyond control, for allowing time to make up the deficiency of court fee stamps on a case to case basis, and the said discretion can only be exercised where the Court is satisfied that sufficient grounds are made out for non-payment of the court fee in the first instance. The provisions depicted under Order VII, Rule 11 and Section 149, CPC have to be read collectively. Without further consideration, the Court cannot dismiss the suit or appeal without determining the insufficiency of court fee and then allowing a timespan for making the deficiency good. By the looks of it, Section 149 reckons the ratification of time for the payment of court fee in the beginning, while Section 148 is germane to the enlargement of time for the compliance of any act for which any period is fixed or granted by the Court as allowed by the CPC, and the Court in its discretion may enlarge such period from time to time, despite the fact that the period originally fixed or granted has expired. The procedure is simply a mechanism and structure with the objective to facilitate and accelerate and the rules framed in the Code are for the advancement of justice.

9. In the case of Sardar Muhammad Kazim Ziauddin Durrani and others v. Sardar Muhammad Asim Fakhuruddin Durrani and others (**2001 SCMR 148**), this Court held that the improper valuation of the subject-matter of the suit does not tantamount to constitute a formal defect because the valuation of the subject-matter of the suit both for

the purposes of jurisdiction of the Court and payment of court fee can be corrected by the Court after recording evidence and if it comes to the conclusion that deficient court fee has been paid on the plaint then it can call upon the plaintiffs/petitioners to make the deficiency good in exercise of its jurisdiction conferred upon it by Section 149, CPC because the question of payment of court fee is a matter between the subject and State as it has nothing to do with opponents. While in the case of Provincial Government thr. Additional Chief Secretary (Development) Government of Balochistan, Quetta and another v. Abdullah Jan and others (**2009 SCMR 1378**), the High Court knocked down the appellants on technical grounds i.e. deficiency of Court Fee but this Court was not inclined to defeat the valuable rights of the appellants as well as the respondents based on technicalities and held that it will be fair and just that the present case should be decided on merits for the simple reason that the object of the Act is to secure revenue for the benefit of State and not to arm the litigant with the weapon of technicalities to harass his opponent. In the case of Siddique Khan and 2 others v. Abdul Shakur Khan and another (**PLD 1984 SC 289**), this Court reiterated the well-accepted rule about the Courts' attitude towards the collection of court fee as an agent of the State and held that the Court Fees Act, like the other fiscal statutes, is to be construed strictly and in favour of the subject and that it was passed with the object of securing revenue for the benefit of the State and not to arm a litigant with the weapon of technicality to harass his opponent. It was further held that the failure to supply proper court fee in the context of the Court Fees Act and Section 149 and Order VII, Rule 11(c), CPC can at best be equated with non-prosecution and not with non-institution or presentation of the matter/document, nor with the bar of limitation. Accordingly, considerations in that behalf for exercise of discretion under Sections 148 and 149 and the relevant provisions of Court Fees Act should be different from those under Section 5 of the Limitation Act, 1908 which in any case does not apply to the suits. To apply the latter to the former cannot be justified on any rule of interpretation.

10. It is reflected from the record that the learned Revisional Court, as well as the learned High Court, both concurrently held that the Order granting time for making good the deficiency was a conditional order and, since the order was not complied with, the plaint was deemed to have been rejected automatically and thereafter the Trial Court could not extend the time and had become *functus officio*. The Latin maxim

"*functus officio*" denotes that once the competent authority has finalized and accomplished the task for which he was appointed or engaged, his jurisdiction and authority is over and ended or, alternatively, that the jurisdiction of the competent authority is culminated once he has finalized and accomplished his task for which he was engaged. If the Court passes a valid order after providing an opportunity of hearing, it cannot reopen the case and its authority comes to an end and such orders cannot be altered save for where corrections need to be made due to some clerical or arithmetical error. This doctrine is applicable to both judicial and quasi-judicial authorities, and, if it is not adhered to, it may result in turmoil for the litigating parties. If the authorities or the judges would be able to alter, change or modify orders capriciously and variably then resultantly will leave no certainty and firmness to any order or decision passed by any Court or authority. It is imperative for a sound judicial system to result in finality and certitude to the legal proceedings.

11. According to Black's Law Dictionary, (Tenth Edition, Page 787), *functus officio* means "having performed his or her office, or (of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished." While P. Ramanatha Aiyar's Advanced Law Lexicon, (Third Edition, Page 1946) defines *functus officio* as "a term applied to something which once has had a life and power, but which has become of no virtue whatsoever. Thus, when an agent has completed the business with which he was entrusted his agency is *functus officio*." Whereas Wharton's Law Lexicon, (Fifteenth Edition, Page 720) defines it as "a person who has discharged his duty, or whose office or authority is at an end." In Corpus Juris Secundum, (Volume 37, Page 1401) it is defined as "Literally 'having discharged his duty'. Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority". In the case of Muhammad Wahid and another v. Nasrullah and another (**2016 SCMR 179**), this Court had observed that the Trial Court had passed an ex-parte decree on 13.07.2008 with a direction to the Appellants to deposit the remaining sale consideration in Court within 40 days, failing which the suit filed by them shall stand dismissed. Admittedly, the Appellants had made an application for extension of time for deposit of balance sale consideration on 14.10.2008 after a lapse of 40 days. Such Application, in the given circumstances, could not have been granted by the Trial Court in

exercise of its powers under Section 148, CPC, as on the said date the Trial Court had become *functus officio* by virtue of its judgment/decree dated 31.07.2008. The Court held that jurisdiction with the Trial Court was available only within the stipulated period of 40 days, and the moment this period of 40 days was over, it ceased to have jurisdiction and had become *functus officio*, in view of the condition incorporated in the decree. Whereas in the case of Shujat Ali v. Muhammad Riasat and others (**PLD 2006 SC 140**), it was held by this Court that once having passed a conditional decree and the suit having stood automatically dismissed for non-deposit of pre-emption money, the Court decreeing the suit had become *functus officio*. It is also obvious that the Court could not have extended the time not only because non-compliance had resulted in the automatic dismissal of the suit, but also because a very valuable right had thereby accrued to the vendee, now a decree-holder.

12. No doubt the time allowed for doing a thing can be enlarged by the Court under Section 148, CPC, in its discretion from time to time, even though the period originally fixed or granted may have expired, but this discretion cannot be exercised arbitrarily, capriciously or whimsically, rather such discretion must be exercised and structured in a reasonable and judicious manner. What we have noted in the case in hand is that, on 27.04.2010, time was allowed under Section 149, CPC by the Trial Court to pay the court fee by 13.05.2010, failing which the plaint shall be deemed to have been rejected, however on 13.05.2010, although the court fee stood unpaid, the Trial Court extended the time for payment of court fee without even fixing any time frame in the extension order, and that too without any oral or written request showing any plausible or sufficient cause by the petitioner for not complying with the Order within the stipulated timeframe. The Trial Court, without considering the sanctity of previous order in which the non-compliance of the order impinged and impacted an automatic rejection of the plaint and without enquiring or questioning the reasons for non-compliance, extended the time in a slipshod manner on its own motion without realizing the repercussions and consequences of its earlier Order whereby the plaint was virtually rejected. In light of the aforesaid, we are of the view that the Trial Court had passed the Order for enlargement of time with a perfunctory approach which was unjustified and unwarranted, hence the learned Revisional Court rightly set aside the Order and the learned High Court rightly maintained the same in its writ jurisdiction.

13. One significant feature which cannot be overlooked, and ought to have been addressed, is that neither the Court should assume or take on the jurisdiction not vested in it by law, nor the Court should abdicate or renounce a jurisdiction so vested in it by law. The CPC is a consolidatory law which is primarily procedural in nature and may be defined as a branch of law administering the process of litigation. The Sections and Rules framed in the CPC are aimed at the advancement of justice as a body of general law. A construction which renders the statute or any of its sections or components redundant should be avoided and must be so construed so as to make it effective and operative. The *raison d'etre* of incorporating Section 148 in the CPC is to deal with genuine cases for extension or enlargement of time in exigency on a case to case basis and despite lapse of time either granted by the Court or the CPC, the Court has been vested with the jurisdiction to extend time in suitable cases. Here, by passing a conditional order, the Trial Court has not only surrendered and abandoned its jurisdiction of enlargement of time under Section 148, CPC, but also closed the doors for the plaintiff in the event of non-compliance of the Order. In our view, such conditional orders are against the spirit of the powers granted to the Court to meet exigencies and as a result, even in genuine cases with proper explanation and sufficient cause of non-compliance or some *force majeure* circumstances, the party will be non-suited unless the conditional order of dismissal of suit or rejection of plaint or memo of appeal is reviewed by the Court itself or is set aside by the higher *fora*. The practice and tendency of passing such conditional orders must be deprecated and if any act is not complied within the time stipulated in the CPC or time granted by the Court, the most appropriate legal action or step would be for the Court to take up the matter at the end of the expiry period and pass an appropriate order for non-compliance and if the party at default applies for the enlargement of time to comply with the direction(s) due to some sufficient cause(s) including force majeure circumstances which prevented compliance within time, then of course on such request the Court may further extend or enlarge time for compliance, however in this case not only did the Trial Court ignore the compliance of its own Order, but it also extended the time and simultaneously settled the issues in the same order without ensuring the deficiency in the court fee and without realizing a crucial aspect that once a conditional order is passed, the Court fastens its

own hands and gives up the jurisdiction so conferred under Section 148, CPC and virtually becomes *functus officio.*

14. At this juncture, we would also like to add that under Order VII, Rule 13, CPC, the rejection of a plaint on any of the grounds hereinbefore mentioned (i.e. in Order VII) shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Meaning thereby that, as the plaint in this case was rejected due to non-payment of court fee and not for any other cause such as limitation, a pathway was opened to the petitioner/plaintiff to invoke the remedy provided under Order VII, Rule 13, CPC by presenting fresh plaint within the prescribed period of limitation rather than wasting time or contesting the matter up to this Court. In the case of Abdul Hamid and another v. Dilawar Hussain alias Bhalli and others (**2007 SCMR 945**), this Court observed that the earlier suit of the appellant was decreed subject to the payment of court fee, which shortcoming can only entail rejection of the suit and as mentioned above, suit on the same cause of action was not barred. It was further held that all the Courts below have committed material irregularity by rejecting the plaint of the appellants without adverting to Order VII, Rule 13, CPC. It is an admitted fact that Order VII, Rule 1, CPC is procedural in nature. It is a settled law that a statute must be read as an organic whole, as laid down by this Court in various pronouncements. While referring to the dicta laid down in PLD 1993 SC 473 and PLD 1993 Lah. 183, the Court further held that the provisions of Order VII, Rule 11 are procedural provisions, and, secondly, that on the principle that the first and the best source from which to ascertain the meaning of any statute is the statute itself, the CPC must be read as a whole, that is to say, those provisions must not be read in isolation, and if an intrinsic aid is afforded in their interpretation by other provisions of the CPC, that aid must be made use of. In the case of Muhammad Ali and others v. Province of Punjab and others (**2009 SCMR 1079**), again this Court held that Order VII, Rule 13, CPC contemplates that rejection of a plaint shall not of its own force preclude the plaintiff from presenting a fresh plaint. Nevertheless the underlined words are important and clearly indicate that other provisions relating to avoiding multiplicity of litigation and attributing finality to adjudications could not be ignored. For instance if a plaint under Order VII, Rule 11, CPC is rejected on the ground of the relief being undervalued or failure to

affix proper court fee stamps, a fresh plaint could always be presented upon rectifying the defects within the prescribed period of limitation. Nevertheless if the plaint is rejected after proper adjudication as to the non-existence of a cause of action or upon the suit being barred by law, the findings could operate as *res judicata* and would not enable the plaintiff to re-agitate the same question through filing a subsequent suit upon the same cause of action and seeking the same relief, therefore, the question whether a fresh plaint could be presented under Order VII, Rule 13 or otherwise would depend upon the nature of the order passed by the court in rejecting a plaint under Order VII, Rule 11, CPC. Whereas in the case of Mian Khan v. Aurang Zeb and 12 others (**1989 SCMR 58**), it was held that the previous suit was admittedly not decided on merits and the plaint was rejected under Order VII, Rule 11, CPC without determining the amount of deficient court fee, which the Court was bound to determine. If a plaint is rejected under Order VII, Rule 11, CPC, the plaintiff is not precluded from presenting a fresh plaint in respect of the same cause of action in view of the provision of Rule 13 of Order VII, CPC, provided the right of action is not barred by any law. Since a fresh suit can be filed after the rejection of the plaint, the principle of *res judicata* is not applicable as there is no adjudication in a case where the plaint is rejected. In order to apply the principle of *res judicata* it is necessary to show that there was a decision finally granting or withholding the relief sought.

15. In the wake of the above discussion, we do not find any illegality or perversity in the concurrent findings recorded by the learned High Court and the learned Additional District & Sessions Judge, Multan. The Civil Petition is dismissed and leave refused.

Judge

Judge

Judge

Announced in open Court
On 10.11.2023 at Islamabad Judge_____
Khalid
Approved for reporting.