

REVIEW PETITION FILED AFTER EX-PARTE DECISION

Petitioners: MUHAMMAD AURANGZEB and another.
Respondents: ADDITIONAL DISTRICT JUDGE, RAWALPINDI and 3 others.
Decision: Petition being bereft of any merits was dismissed in limine.

In this case, the Petitioners instituted a suit for declaration, specific performance and injunction against the Respondents before the learned Civil Judge Class-1, Rawalpindi. On account of the Respondent's absence, the case was proceeded ex-parte and ultimately the suit was decreed. The "Respondents" moved an application under section 12(2) of the Code of Civil Procedure, seeking an annulment of the decree, which was resisted by the Petitioners but was accepted. Feeling aggrieved, the Petitioners filed a Revision Petition before the Learned Additional District Judge but of no avail, as the same was dismissed. The Petitioners filed this CP under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

In the hearing, the counsel for the Petitioners contended that since the "Respondents" did not appear despite publication, the trial Court had rightly proceeded against them ex-parte. They further stated that the ex-parte decree was passed after observing all the Code formalities but it was annulled on the application of "Respondents" without assigning any lawful reasoning and that even the Revisional Court did not take into consideration the material irregularity committed by the trial Court and affirmed the order in a mechanical manner.

After hearing the arguments and perusal of record, the Court observed that the suit was instituted by the Petitioners mentioning that the "Respondents" were residents of Mirpur, Azad Kashmir. It appeared that for procuring the attendance of the "Respondents", Trial Court directed the issuance of process but summons could not be issued due to non-deposit of process fee by the Petitioners and instead of proceeding against Petitioners on account of their failure to deposit the process fee, the Court opted to issue proclamation in the newspaper under Order V, Rule 20 of "C.P.C."

Rule 20 provides the mechanism of substituted service but before resorting to said provision of law it is incumbent upon the Court to first ensure the adherence to Rules 16, 18 and 19 of the said Order. The provisions were not illusory but being a bounden duty of the Court to make substantial compliance of the same before directing the substituted service in terms of Order V, Rule 20 of "C.P.C.". The Court for the said purpose had to satisfy itself that all efforts to effect service in the ordinary mode had failed. Non adherence to the mandatory provisions would render the process invalid and the edifice built thereon would automatically fall down.



A glimpse of record made it abundantly clear that proper procedure was not observed in the course of effecting service of the “Respondents”, as no active or concrete effort was made for the personal service, the resort in the substituted service in the circumstances was not only highly unwarranted but sketchy. The process of service was thus on the one hand tainted with procedural material irregularities and on the other fraught with illegalities.

It was thus apparent that on the basis of invalid mode of service and that the Petitioners did not mention the addresses of “Respondents” abroad, they were, thus, proceeded against ex-parte, in an illegal and unlawful manner, which followed the ex-parte decree. On attaining the knowledge, the “Respondents” moved a petition seeking annulment of the ex-parte decree on the ground that it was obtained through misrepresentation. These were sufficient grounds to show that the ex-parte proceedings order followed by the ex-parte decree was not the outcome of due course of law. This was the reason that the learned Civil Judge, in the first instance, allowed the petition and set aside the ex-parte proceedings order as well as decree, which was further affirmed by the revision Court and rightly so.

The Petitioners seeking writ of certiorari had a very limited scope; The Petitioners, in order to persuade the Court to exercise the extraordinary jurisdiction, had to demonstrate that the order or Judgment under assail lance was without lawful authority and suffered with material illegalities. The Petitioners had failed to point out any perversity or material irregularity, warranting exercise of constitutional jurisdiction by Court, consequently, the petition being bereft of any merit was dismissed in limine.

