JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Civil Revision No.172 of 2023

Ali Haider

Vs.

Noman Habib

Petitioner by	:	Ch. Muhammad Mohsin Maqsood Advocate.
Respondent by	:	Ch. Abdul Rehman Hur Bajwa Advocate.
Date of Hearing	:	**01.02.2024**.

SAMAN RAFAT IMTIAZ, J.-

1. Through this Civil Revision the Petitioner [Ali Haider] has assailed (i) the Order dated 12.09.2023 **("Impugned Order I")** passed by the learned Additional District Judge, Islamabad-West **("Trial Court")** whereby the application filed by the Petitioner for leave to appear and defend the Suit was allowed albeit subject to submission of surety bond of Rs.10,000,000/- and (ii) the Order dated 11.10.2023 passed at 12.30 p.m. **("Impugned Order II")** whereby the Impugned Order I was recalled and the Petitioner was proceeded against exparte and (iii) the Order dated 11.10.2023 passed at 2:30 p.m. **("Impugned Order III")** whereby the application filed by the Petitioner for appropriate orders was dismissed.

2. The brief facts of the matter as per memorandum of the Petition are that the Respondent filed a Suit under Order XXXVII, CPC for Recovery of Rs.10,000,000/-. The Petitioner filed an application for grant of leave to

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appear and defend the Suit which was allowed vide the Impugned Order I however subject to submission of surety bond of Rs.10,000,000/- on or before 04.10.202. The Petitioner was unable to furnish surety on the date fixed, therefore, he moved an application for extension in time which was allowed and the matter was adjourned to 11.10.2023. On the said date the Petitioner could not appear on the first call, therefore, the matter was kept in waiting. The matter was again taken up at 12:30 p.m. when the learned counsel for the Petitioner appeared and requested for one further opportunity for compliance of the Impugned Order I but the Trial Court recalled the Impugned Order I vide the Impugned Order II and proceeded against the Petitioner exparte. Later on the same date that is 11.10.2023 the matter was taken up at 2:30 p.m. on the application filed by the Petitioner praying for appropriate orders. It was stated in the said application that the Petitioner had arranged to submit surety, which was deposited with another Civil Court but was not released therefore, the Petitioner has arranged another surety, Mr. Muhammad Jamil who is owner of Plot No. 891, Sector I-14/1 (measuring 25x50) Islamabad and submitted the documents of the same. However, the application was dismissed vide the Impugned Order III. The Petitioner is aggrieved of the Impugned Orders I, II and III. Hence, this Civil Revision.

3. The learned counsel for the Petitioner argued that the Petitioner was unable to comply with the direction to submit surety on 04.10.2023 only because the releasing orders for the surety the Petitioner intended to submit were not signed by the concerned Civil Court and as such the non-compliance of the Impugned Order I was not willful on the part of the Petitioner. He submitted that since such releasing orders were not signed even on 11.10.2023 therefore, the Petitioner arranged an alternate surety and appeared before the Trial Court at 2:30 p.m. He argued that the Petitioner was ready to submit surety therefore, the Trial Court in the interest of justice ought to have recalled its Impugned Order II passed earlier on the same date at 12:30 p.m. whereby the Impugned Order I was recalled and the Petitioner was proceeded against exparte. He argued

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further that by passing the Impugned Orders II and III the Petitioner has been precluded from submitting surety bond despite having raised a plausible defense in its leave application, which amounts to a technical knockout. In support of his contentions the learned counsel relied upon *Shaukat Iqbal vs. Muhammad Shumail Akram,* 2023 CLC 193; and *Messrs H.J.(PVT.) Ltd. through Chief Executive Officer, Rawalpindi and another vs. Additional District and Sessions Judge, West-Islamabad and another,* 2022 MLD 1651.

4. The learned counsel for the Respondent, on the other hand, has stated that the Petitioner has failed to point out any illegality in the Impugned Orders II and III and that the Trial Court had no choice but to recall the Impugned Order I upon the Petitioner's failure to fulfill its condition. He also urged that the matter has been argued and is reserved for judgment, therefore, this Petition merits dismissal.

5. I have heard the learned counsel for the parties and have perused the record.

6. It appears that there is no denial that the Petitioner did make an effort to submit security in compliance of the Impugned Order I but was precluded to do so in a timely manner because the same security was deposited before another Court in a different matter which could not be released in time. There is also no denial that the Petitioner did appear on the date for submission of security at 2.30 p.m. along with alternate security and property documents but the Trial Court refused to accept the Petitioner's application in view of the Impugned Order II passed on the same date earlier at 12:30 p.m.

7. In my opinion the Impugned Order II is itself erroneous as there was no need to recall the leave granting order on account of failure to submit security. A conditional leave granting order does not require recalling for failure to fulfill the condition. In case leave is granted subject to condition and such condition is not fulfilled such order ceases to have effect to the extent of grant of leave to appear and defend the suit and the defendant's

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application for leave to appear and defend the suit is deemed to have been dismissed[1].

8. In view of the foregoing, since Impugned Order II recalling the Impugned Order I was itself unnecessary and a nullity in the eyes of the law therefore, refusal to accept security from the Petitioner on the same date vide the Impugned Order III was unjustified and unwarranted. The Impugned Orders II and III are, therefore, not sustainable.

9. Consequently, the instant Civil Revision is partially **allowed** and the Impugned Orders II and III are hereby set aside while Impugned Order I is upheld. The Petitioner is directed to submit security before the Trial Court as per the Impugned Order I within two days of the date of receipt of the certified copy of this Order failing which the learned Trial Court shall proceed in accordance with law.

(SAMAN RAFAT IMTIAZ)
JUDGE

Tanveer Ahmed/*

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[1] *Abbas Ali and another vs. Asif Abbas and 3 others,* 2016 CLD 555; and *Col.(Retd.) Ashfaq Ahmed and others vs. Sh. Muhammad Wasim*, 1999 SCMR 2832.