

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
*(Judicial Department)*

**C.R No.614-P/2017**

**Syed Le hazullah VS.Housing Director through Housing Director**  
**General and another**

**Present:**      **Nemo for petitioner**

**Ms. Neelam A Khan, Advocate. for Respondents.**

**Date of hearing:**      **01.08.2024**

**JUDGEMENT**

**MUHAMMAD NAEEM ANWAR, J.**-Impugned through instant civil revision, filed under section 115 of the Code of Civil Procedure "CPC", is the order, dated **20.05.2017** of learned Civil Judge-XVII, Peshawar, whereby application of the petitioner under section 12(2) C.P.C in civil suit titled Housing Director vs Le hazullah was dismissed.

**2.** This Civil Revision was filed by the petitioner on **14.10.2017** through Mr. Saifullah Mohib Kakakhel, Advocate, which was fixed before the court on 27.10.2017. On that date, Miss Soniya, advocate, appeared and requested for adjournment and on her request, the petition was adjourned. On 22.12.2017, counsel for the petitioner appeared and requested for adjournment to document the petition and he was allowed to do so. On 23.02.2018, though, without issuance of notice to the respondent, Ms. Neelam A Khan, Advocate appeared on behalf of the respondents and marked her attendance, however, once again, a request was made for petitioner to further document the petition for which, he was also allowed. On 23.04.2018, Mr. Zeshan, Advocate, junior to counsel for the petitioner, appeared, who requested for adjournment due to non-availability of his senior on account of his indisposition and, thus, the petition was

adjourned. On 30.03.2018, clerk of counsel for the petitioner appeared and he requested for adjourned on the ground that he could not prepare the case and, accordingly, the case was adjourned. On 08.02.2019, none was present on behalf of the petitioner, therefore, the petition was dismissed for non-prosecution, subsequently, for its restoration a CM was filed, which was fixed for 01.03.2019, however, adjourned due to strike of lawyer's community. On 22.03.2019, the application for restoration was allowed and petition was resorted to its original number. On 15.04.2019, the agent of counsel for the petitioner appeared and stated that counsel for the petitioner was out of station, therefore, the case was adjourned. On 10.02.2020, on the request of clerk of counsel for the petitioner, the petition was adjourned. On 06.03.2020, learned counsel for the petitioner was out of station, therefore, on the request of his clerk the petition was adjourned. On 20.04.2020 and 02.10.2020, this petition was adjourned due to absence of learned counsel for the respondent, while on 20.10.2020; the case was adjourned due to strike of lawyer's community. On 30.11.2020, once again, learned counsel for the petitioner was not in attendance and this court observed frequent adjournments on the part of learned counsel for the petitioner, therefore, interim relief granted to the petitioner was revoked. The court further observed that since the matter was still in motion, therefore, the office was directed to issue notice to the learned counsel for the petitioner to argue the matter on its maintainability and, accordingly, the case was adjourned to 14.12.2020 and on that date, though, learned counsel for the petitioner appeared, however, requested that since the petition was already heard by Hon'ble Mr. Justice Ijaz Anwar, therefore, it was adjourned for 18.01.2021 for fixing it before his lordship. On 18.01.2020, the petition was adjourned due to paucity of time and on 01.02.2021, the case was adjourned on the request of learned counsel for the petitioner as he had not prepared the case, but as a last chance. On 23.01.2023

the petition was adjourned on the request of counsel for the petitioner. On 25.09.2023, 04.12.2023 and 18.03.2024, the petition was adjourned on the request of learned counsel for the petitioner and same was situation on 22.07.2024 and 30.07.2024, however, on the last date of hearing, directions were issued to argue the petition, otherwise the petition shall be decided on the basis of the available record and, therefore, the case was adjourned for 31.07.24 and on that date, Ms. Alishba Khan, Advocate, junior to learned counsel for the petitioner, appeared and requested for adjournment and on her request the case was adjourned for today. Today, once again, none was present on behalf of the petitioner. The order sheets of the case reveal that the instant petition is being adjourned on the request of learned counsel for the petitioner since 2017 one pretext or the other, therefore, this court has been left with no other option but to decide the case based on available record.

3. It appears from the record that there were two suits pending before the court, one was filed by the petitioner bearing No. 88/1 of year, 2009, for recovery of Rs. 1286145/- as an amount of electricity charges, 64742000/- as damages and 265000/- on account of an Advance/over payment made to defendant while respondent No.1 has filed a suit No. 65/1 for recovery of Rs. 28.066 million. The suit of the petitioner was stayed under section 10 C.P.C, on 23.12.2010 on the grounds that the suit of respondent No.1 for recovery of 18.066 million was pending adjudication before the court. Respondent No.1 questioned the order, dated 23.12.2010, being violative of the provision of section 10 C.P.C. The present petitioner was respondent in Civil Revision No. 416/2011; however, he was proceeded ex parte. Ex parte arguments were heard by the Division Bench of this court on 11.02.2014. This court directed that both suits No. 65/1 of the year 2007 and 88/1 of the year 2009 be decided in accordance with law. Subsequently, the suit

of the petitioner was dismissed for non-prosecution, whereas suit of the respondent No.1 was decreed against the petitioner on 06.09.2014. Order dated 06.09.2014 was challenged through application bearing No. 4/12 (2) C.P.C of year, 2016 which was dismissed on 20.05.2017, hence, the instant petition.

4. During pendency of the instant petition, CMs No. 563/18, 448-P/18, 33/2019 and 1426/19 for placing on file the documents appended with the applications were filed. The documents appended with the application are with respect to the controversy between the parties and the contents of the applications were verified through duly sworn affidavits, therefore, all these CMs are allowed and the documents appended with the CMS are made part and parcel of the petition.

5. It is an admitted fact that both the suits of the petitioner and that of the respondent No.1 were pending adjudication before one and the same court. Record further reflects that the petitioner was proceeded ex-parte in the suit of respondent, and he has moved an application for setting aside ex parte proceedings on 31.05.2014. The record further reflects that, once again, he absented himself from the proceedings and was proceeded ex parte, later, ex-parte proceedings were culminated into ex parte decree through order dated 06.09.2014.

6. For setting aside the ex parte decree, a specific mode has been provided in the Civil Procedure Code. Ex parte decree, dated 06.09.2014, was sought to be set aside through application No. 41/6 filed on 09.05.2015 which was dismissed for non-prosecution on 25.06.2014 by the court of civil Judge XVIII, Peshawar. It is worth to mention that another application was filed bearing No.8/ 12(2) for setting aside the ex parte order on the ground that as he was not served properly and was not aware about the proceedings before the court, therefore, the decree is the result of presumption and confusion as reflected from Para 6

of the ground of the application and it was prayed that the suit may be revived.

7. It is a settled principle of law that once the defendant appears before the court and, thereafter, disappears from the proceedings, the limitation for setting aside ex parte decree is thirty (30) days under Article 164 of the Limitation Act. Reliance is placed on the case law reported as "**Shahid Pervez alias Shahid Hameed Vs. Muhammad Ahmad Ameen**" (2006 **SCMR 631**) wherein it has been held that once a person appears, participate in proceedings, submits written statement and later on absented himself from proceedings, which resulted into ex-parte decree, application for setting aside of ex-parte decree will have to be submitted within a period of thirty days as provided in Article 164 of the Limitation Act, 1908.

8. Adverting to the ground of application under section 12 (2) C.P.C, it appears that the petitioner seeks setting aside of ex-parte decree however, the record transpires that his application under Order IX Rule 13 C.P.C filed earlier, was dismissed, and he filed another application under section 12(2) C.P.C on 09.05.2015 for setting aside of the order dated 06.09.2014. It appears that because of limitation he filed an application under section 12(2) C.P.C, however, when the remedy under Order 9 rule 13 C.P.C was availed and his application was dismissed for non-prosecution, the petitioner was required to submit the application for restoration of the application which was dismissed for non-prosecution, but he filed the application and has sought for setting aside ex parte decree through revival of the suit by filing an application under section 12(2) C.P.C. Application under section 12 (2) C.P.C and revival of suit in consonance with sub clause 2 of section 12 is for an aggrieved person but on the ground of fraud, mis representation and want of jurisdiction, but the question in the instant petition is as to whether he could file a application under

section 12 (2) C.P.C when he already filed an application when his suit was dismissed in default? Especially, when he resisted the suit of respondent No.1 and was proceeded ex parte, however, ex parte proceedings were set aside and, thereafter, he appeared before the court through different applications. Application under section 12(2) C.P.C is not a substitute for the application for setting aside decree under Order 9 rule 13 C.P.C rather grounds of the application under section 12(2) C.P.C are different to the application which could be seen and adjudged within the four corners provided by the legislature. No doubt, suit of the responded No.1 has been decreed against the petitioner ex parte but due to lethargic attitude of the petitioner. It is also reflected from the record that the suit of the plaintiff for recovery of a specific amount was also dismissed for non-prosecution. No doubt, in appropriate cases, application filed under section 12(2) C.P.C requires submission of written reply, framing of issues and recording of evidence but not in each case as it depends upon facts and circumstances of each case. Reliance is placed on the case of “Amina Bibi through General Attorney Vs. Nasrullah and others” (2000 SCMR 296), “Mrs. Anis Haider vs S. Amir Haider & others” (2008 SCMR 236) and “Ghulam Muhammad Vs. Ahmed Khan” (1993 SCMR 662).

9. It is high time to observe that frivolous litigations are initiated by the party without any *locus standi*. This is one of the classic examples where this application remained pending before this court for the last six years where on each day, the petitioner requested adjournment. On one hand, frivolous litigation may cause and increase in the backlog, and, on the other hand, it creates hurdle in smooth administration of justice and for such like matters, it was held time and again by the superior Courts that incompetent petition require its burial from its inception and, in rule 13 CPC which too was dismissed and lastly, he filed

application under section 12(2) which was not maintainable hence, it was rightly dismissed by learned lower Court.

**10.** Keeping in view the afore-discussed facts of the case, the conduct of the petitioner for the last six years, this application is dismissed with costs of **Rs. 50, 000/-**. Office shall send the copy of this order to the learned executing Court for recovery along with decreed amount.

**Announced.**  
**01.08.2024.**

  
**JUDGE**