IN THE SUPREME APPELLATE COURT, GILGIT-BALTISTAN

Gilgit

(Appellate Jurisdiction)

CPLA No. 43/2011

Before:

Mr. Justice Rana Muhammad Arshad Khan, Chief Judge.
Mr. Justice Raja Jalal Uddin, Judge.

Muhammad Ajab Khan s/o Muhammad Hazir Khan r/o Harkush Tehsil Gupis, District Ghizer.

..... **Petitioner**

Versus

1. Faizullah s/o Haji Jan Mulla r/o GUl Akhori, District Ghizer.
2. Abdul Jabbar s/o Qayyum r/o Harkush presently resident of Main Bazar Gupis, near Assistant Commissioner Office, Gupis.

..... **Respondents**

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60(13) OF GILGIT-BALTISTAN (EMPOWERMENT AND SELF GOVERNANCE) ORDER, 2009 AGAINST THE JUDGMENT/ORDER DATED 07.09.2011 PASSED BY THE CHIEF COURT GILGIT-BALTISTAN IN CIVIL MISC. NO. 51/2010, WHEREBY THE REVIEW PETITION OF THE PETITIONER HAS BEEN DISMISSED AND THE JUDGMENT/ORDER DATED 23.11.2010 PASSED IN CIVIL 1ST APPEAL NO. 18/2010 AND JUDGMENT/DECREE PASSED BY THE CIVIL JUDGE GUPIS YASIN IN CIVIL SUIT NO. 94/2006, WERE UPHELD.

FOR SETTING ASIDE THE IMPUGNED JUDGMENT/ORDER DATED 07.09.2011 AND 23.11.2010 OF CHIEF COURT GILGIT-BALTISTAN AND JUDGMENT/DECREE DATED 14.10.2010 PASSED BY THE CIVIL JUDGE 1ST CLASS, GUPIS YASIN.

Present:

1. Muhammad Hussain Shehzad Advocate for the petitioner.
2. Mir Ikhlaq Hussain, Advocate for the respondents.

Date of hearing: 29.04.2014

JUDGMENT

Rana Muhammad Arshad Khan, CJ: This petition by way of special leave to appeal is preferred against the Judgment/order dated

23.11.2010 passed by the learned Chief Court Gilgit-Baltistan in Civil First Appeal No. 18/2010 and order dated 07.09.2011 passed in Review Petition No. 51/2010, whereby the Judgment of the learned Trial Court was upheld.

2. The facts in brief as borne out from the record giving rise to file the instant petition are that the petitioner instituted a civil suit bearing No. 94/2006 in the court of Civil Judge 1st Ist Class, Gupis/Yasin on 07.12.2006 while claiming damages on account of malicious prosecution to the tune of Rs. 10,00,000/- (Rupees Ten Lac only). It was disclosed in the plaint that the respondents having their hands in gloves got a criminal case registered against the present petitioner vide FIR No. 37/2004 dated 20.12.2004 under offences 11/18 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 read with Section 506 PPC, at the instance of Bahadar Wali with Police Station Gupis, District Ghizer alleging therein that the petitioner while armed with deadly weapon, tried to abduct the daughter of the respondent No. 2 Mst. Hoor Bibi and also extended the threats of dire consequences. During the investigation, another FIR No. 38/2004 for an offence under Section 13 of the Arms Ordinance, 1965, was also registered against the petitioner. The investigation of both the cases was carried out by the police officer and on the conclusion of the investigation and by conforming codal formalities, the petitioner was sent to judicial lockup and he faced the trial which ultimately culminated into his acquittal by the Judicial Magistrate 1st Class Gupis/Yasin vide Order/Judgment dated 02.11.2006. It was set out in the plaint that the alleged occurrence had never taken place and the petitioner was roped in the aforesaid FIRs on account of malice. It was pleaded further that the

petitioner was a respectable pensioner of Pakistan Army and the prosecution at the hands of respondents caused him mental agony and torture besides forcing him to suffer monitory loss and also lowered his image and dignity to the estimation in the society. The details of expenses, which the petitioner allegedly suffered on account of alleged malicious prosecution, were also given in the plaint.

3. On the contrary, the respondents controverted the claim of the petitioner up to tooth and claw by raising preliminary objections. Besides that, he also refuted the claim of the petitioner by maintaining that the FIR was registered against the petitioner as the occurrence actually had taken place and that during the course of trial, through an exercise of influence, won over the PWs who had resiled from their statement during the course of trial and the petitioner ultimately paved the way for smooth acquittal of him.

4. While taking in consideration, divergent pleadings of the parties, the learned trial court framed as many as 08 issues including relief. The learned trial Court, thereafter, directed the parties to adduce their respective evidence. Hence, after recording the evidence for and against, concluded the trial and vide judgment and decree dated 14.10.2010 dismissed the suit of the petitioners. The petitioner while feeling aggrieved and dissatisfied called in question the judgment/decree supra before the Chief Court Gilgit-Baltistan by filing a Civil First Appeal. However, the same was also dismissed vide order dated 23.11.2010. The petitioner assailed aforesaid order in Review Petition filed before the same court which was also dismissed vide order dated 07.09.2011. Now, the orders of the learned Division bench of the Chief Court, Gilgit-

Baltistan and the Judgment and decree passed by the learned trial Court have been challenged before this Court.

5. Arguing the case, learned counsel for the petitioner submitted with full vehemence that the impugned order passed by the Courts below are merely replica of conjecture and surmises, as the Courts below failed to appreciate the evidence on record and also ignored the law on the subject. It is added that the first appellate Court altogether adopted a novel style of disposal of the Civil First Appeal which resulted in grave miscarriage of Justice. The learned counsel submitted further that the Judgment and decree passed by the learned trial Court is also based on misreading and non-reading of material evidence and as such the same are not sustainable at law.

6. Conversely, learned counsel for the respondents has controverted the submission made by the learned counsel for the petitioner and supported the impugned judgment/order passed by the learned courts below.

7. We have heard the learned counsel of the parties very patiently and have gone through the record with their help and examined the same thoroughly.

8. Before dilating upon the merits of the case, we deem it appropriate to refer to the impugned order dated 23.11.2010 passed by the First Appellate Court which reads as under: -

> *"Heard on preliminaries.*
> *Counsel for the appellant could not be able to point out any cogent reasons, needing consideration in appeal, therefore, the appeal disposed of in limine."*

9. At the very outset, it is to be seen as to whether the order of the appellate Court falls within the ambit of the definition of a “Judgment”. ‘Judgment’ has been defined in Section 2(9) of the Code of Civil Procedure which reads as under: -

“2. (9). "Judgment" means the statement given by the Judge of the grounds of a decree or order.”

10. It implies from the above that the Judgment means judicial decision of a court or Judge, need not necessarily deal with all matters in issue in a suit but may determine only those issues, decision of which has the effect of adjudicating all matters in controversy resulting into final disposal of lis. The very essential element of the Judgment is that there should be statement of grounds of decision and not recapitulates of arguments of the parties. It must show evolution of evidence led by both the parties and conscious effort of courts to reach a certain conclusion. The most important ingredient of a valid judgment is reasons or grounds for decision because validity of the Judgment in higher forums is to be seen from reasoning and same is to be challenged by the aggrieved party is to attack reasoning of judgment in appeal and not the narration of the facts.

11. In the in hand case, the main hub of the claim of the suiter is that he occasioned the loss to his reputation which has lowered down in the estimation of public. The law, in this connection, provides two remedies, one is a heavy cost and the other one is damages for malicious prosecution. The award of cost, successful party is not barred to file a suit for damages for malicious prosecution. In the recent innovation, the law has took a new turn that the cost incurred on litigation in a suit, it can be claimed by a separate suit after decision of the lis in which cost is

alleged to have been incurred. The suitor in the main case could furnish the bill of the cost or the court could grant the damages persuaded by exemplary cost but it has to be seen on the basis of assessment of the evidence and the stance taken by the courts below.

12. Acquittal and honorable acquittal carries no different meaning but if something has been rendered in judgment that the accused suffered prosecution as he suffered rigorous trial on account of malice or ill will, all the more, it can strengthen the case of the suiter, yet, the independent evidence brought on record to dislodge the finding cannot be ignored altogether. Civil Court can command judge of Criminal Court but the Criminal judicator cannot. However, this is not the proper stage to comment upon the veracity of the stance taken by either of the parties, lest it may prejudice the merits of the case of either party before the Courts below.

13. The conclusion arrived at by the court may not be binding without reasoning, therefore, the court insist that even in ex-parte judgment, reasoning should be given very clearly. There is another aspect of the case in hand and the matter can be looked from another angle namely that it is cardinal principle of justice that justice should not only be done but should seem to have been done. The reasoning is also necessary to satisfy the most important principle of dispensation of justice. The Court acts with material irregularity and illegality, if fails to record reasons in support of its decision. In such a situation, if the reasoning is missing, it can hardly fell within purview of the definition of Judgment. The accumulative effect of Section 2(9), Order XX, Rule 4 would be that decision by a court to be termed as a judgment must be based on reasoning and failure to comply with the requirement of the

provision of law, would render the Judgment nullity and unsustainable. It is not the trial court alone which is required under the law to give reasons for its just conclusion, even appellate court is also bound to give detailed reasoning in support of every judgment. Order XLI Rule 31 clearly mandates that Judgment of the appellate court should be in writing and shall state:

i. The points for determination.
ii. The decision thereon.
iii. The reasons for decision.
iv. Where the decree applied from is reversed or varied, the relief which the appellant is entitle.

14. It is thus abundantly clear that the court, whether it is trial court or appellate court, is saddled with duty to give reasons in support of its judgment. August Supreme Court of Pakistan in case of Raja Muhammad Afzal v. Ch. Altaf Hussain and others (1986 SCMR 1736) observed as under: -

> *"'Judgment' has been defined in section 2, clause (9) of the Civil Procedure Code as 'judgment' means the statement given by the Judge of the grounds of a decree or order' and Order has been defined in clause 14 of the same section as 'formal expression of any decision of a civil Court which is not a decree'. Further, Order XX, Rule 4, sub-rule (2) prescribes that judgment of Courts other than the Court of a small causes 'shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision'."*

15. Reference may also conveniently be made to the case of Mst. Fatima v. Khuda Bax and others [PLD 1959 (west Pakistan) Lahore 826] wherein their lordship observed as under: -

> *"31. .....Order XX, rule 4, C. P. C. provides that judgments of Courts other than a Court of Small Causes shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. Similarly Order XLI, rule 31, C. P. C.*

provides that a judgment of the Appellate Court shall state-

"(a) the points for determination ;
(b) the decision thereon ; and
(c) reasons for the decision."

The reasons for the decision on the points involved in the determination of an appeal must be based on the evidence on the record and the provisions of law applicable to them."

16. Reference may also be conveniently made to case of Muhammad Saddiq v. Syed Ali Shah and another (PLD 1976 Lah. 293). The relevant part reads as follows: -

"The learned counsel for the parties have appeared and they agree that in the absence of the detailed order the short orders cannot be said to have disposed of the suits. I have also considered this matter on legal plane. It is well-settled that when a Civil Judge decides a case without giving reasons in the judgment, he acts with material illegality and irregularity in the exercise of jurisdiction vested in him by law. See Muhammad Arif and others, v. Muhammad Ishaq and another A I R 1937 Lah. 352. In Mollah Ejahar Ali v. Government of East Pakistan and others P L D 19 7 0 S C 173, where the order was "the application is rejected as there is no substance in it", the supreme Court observed that :

"There is no doubt that the High Court's order which is unfortunately purfunctory gives the impression of a hasty off-hand decision which, although found to be correct in its result, is most deficient in its context. If a summary order of rejection can be made in such terms, there is no reason why a similar order of acceptance saying, `there is considerable substance in the petition which is accepted', should not be equally blessed. This will reduce the whole judicial process to authoritarian decrees without the need for logic and, reasoning which have always been the traditional pillars of judicial pronouncements investing them with their primary excellence of propriety and judicial balance. Litigants who bring their disputes to the Law Courts with the incidental hardships and expenses involved. do expect a patient and a judicious treatment of their cases and their determination by proper orders. A judicial order must be a speaking order manifesting by itself that the Court has applied its, mind to the resolution of

> *the issues involved for their proper adjudication. The ultimate result may be reached by a laborious effort but if the final order does not bear an imprint of that effort and on the contrary discloses arbitrariness of thought and action, the feeling with its painful results, that justice has neither been done nor seems to have been done is inescapable. When the order of a lower Court contains no reasons, the appellate Court is deprived of the benefit of the views of the lower Court and is unable to appreciate the processes by which the decision has been reached."*
>
> *The same is the law contained in Order XX read with section 33 of the Code of Civil Procedure. In the face of the aforesaid legal position, I hold that the learned Civil Judge acted with material irregularity and illegality in the exercise of his jurisdiction by not writing the detailed reasons with reference to which he passed the short orders. As a matter of fact, even if the short order is a judgment or a part of a judgment, then it is incomplete .as its corresponding part, which was to be separately written, was not written at all. The short orders or judgments on the peculiar facts and circumstances of these cases are thus not well-sustained and are a nullity.*

17. Yet in another judgment "Gouranga Mohan Sikdar v. the Controller of Import and Export and 2 others (PLD 1970 SC 158), the apex Court noticed this type of order with anguish that High Court while disposing of petition or case, raising substantial question of law and facts must pass a speaking judicial order manifesting by itself that Court applied its mind to issue involved. Lis dismissed by a short order "referred as there is no substance in it" was strongly deprecated. The relevant portion of illustrious judgment reads as under: -

> *"These objections apply with equal force to the case before us. In view of the fact that a substantial question was raised by the applicant invoking the writ jurisdiction of the High Court it was, as observed by Munir CJ.*
>
> > *"the undoubted duty of the High Court to state what the precise point raised by the applicant was and the grounds on which it was rejected".*
>
> *To the same effect are the observation of this Court in the case of Ejahar Ali v. Government of East Pakistan and others wherein identical single sentence order had been made. This court was at pain to point out that "A judicial order must be a speaking order manifesting by itself that*

the Court has applied its mind to the resolution of the issues involved for their proper adjudication"

18. In any event, therefore, the position which springs out from the precedent case law is that disposal of cases through arbitrary exercise of power without application of judicious mind is least permissible at law and this tendency, high time needs to be discouraged. Even if some lawyers defending the cause of litigant public as his client, showed not a proper performance in rendering assistance to the court, the High Court and subordinate Judiciary is not absolved of duties to apply the same law on the basis of factual matrix or marshalling facts. We have noticed that the Hon'ble division bench of the Chief Court has lost sight to consult the record for the points and grounds taken in the memorandum of appeal. The disposal of cases in slip shod manner is totally unwarranted by law.

19. For the reasons given above, this petition is converted into appeal and the same is allowed. The judgments/orders dated 23.11.2010 and 07.09.2011 passed by the learned division bench of the Chief Court are not sustainable, these judgments/orders being not sustainable at law are set aside and the case is remitted to the Chief Court with the direction to decide the matter afresh in accordance with law as enumerated hereinabove.

Chief Judge

Judge