

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

Civil Appeal No. 18/2017

In

CPLA. No. 89/2016.

Muhammad Amin Shah through LRs

Petitioners.

Versus

Sheraz Khan & another

Respondents.

PRESENT:-

1. Mr. Manzoor Ahmed Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioners.
2. Mr. Ali Dad Advocate on behalf of the respondents.

DATE OF HEARING: - 08.05.2017.

ORDER.

This petition for leave to appeal has been directed against the impugned order dated 04.05.2016 passed in Writ Petition No. 77/2014 by the learned Chief Court whereby the said Writ Petition of the petitioners was dismissed by upholding the judgment dated 11.06.2014 passed by the learned District Judge Ghizer.

2. Briefly the facts of the case are that the respondents filed a Civil Suit No. 28/2004 in the learned Civil Court Gupis/Yasin entailing to ex-parte decree dated 29.05.2012, in the said suit. The petitioners filed Civil Misc. No. 43/2012 in the learned Trial Court for setting aside the ex-parte decree. Upon hearing the learned Trial Court set aside the ex-parte decree and restored the case vide order dated 12.12.2012 subject to payment of cost of Rs. 7000/- by the

petitioners. The respondents feeling aggrieved and dissatisfied with, filed Civil Revision No. 06/2013 which upon hearing was allowed on 11.06.2014. The petitioners feeling aggrieved filed Writ Petition No. 77/2014 before the learned Chief Court which upon hearing was dismissed vide impugned order dated 04.05.2016. It is not disputed that the proceedings of the suit have almost been completed by the learned Trial Court. It is also an admitted fact that the suit property is in possession of the petitioners. As per record of the case, the petitioners are intentionally using delaying tactics in order to prolong their possession on the disputed property. As per averments of the respondents the application under Order 9 Rule 13 CPC filed by the petitioners was barred by time for a period of 05 months.

3. The learned counsel for the petitioners submits that the Civil Suit filed by the respondents was conducted through attorney on behalf of the petitioners who was continuously appearing in the learned Trial Court. He submits that due to Attorney's illness, he neither informed the petitioners nor he himself appeared in the proceedings, consequently, the matter was decided ex-parte. He reiterates that the petitioners moved an application under Order 9 Rule 13 CPC for restoration of the suit which was allowed by the learned Trial Court vide order dated 12.12.2012 subject to payment of cost of Rs. 7000/-. Subsequently, it was reversed by the learned First Appellate Court vide order dated 11.06.2014 and the same

was upheld by the learned Chief Court vide impugned order dated 04.05.2016. He further submits that the learned Chief Court as well as the learned District Court fell in error by reversing the orders for Restoration of Suit. He prays that the impugned order dated 04.05.2016 in Writ Petition No. 77/2014 passed by the learned Chief Court and the judgment dated 11.06.2014 passed by the learned District Judge Ghizer in Civil Revision No. 06/2013 may pleased be set aside being not sustainable.

4. On the other hand, the learned counsel for the respondents supports the impugned order dated 04.05.2016 in Writ Petition No. 77/2014 passed by the learned Chief Court. He contends that the petitioners have been given sufficient time to appear and plead their case but they deliberately remained absent by using delaying tactics on one or another pretext. He also contends that the petitioners used these tactics because the disputed property was/is in their possession. He further contends that the application under Order 9 Rule 13 CPC filed by the petitioners was barred by time for a considerable period of 05 months which was wrongly allowed by the learned Trial Court. He prays that the impugned order dated 04.05.2016 in Writ Petition No. 77/2014 by the learned Chief Court may graciously be affirmed.

5. We have heard the learned counsels for the respective parties, perused the record of the case file and gone through the impugned order dated 04.05.2016 in Writ Petition No. 77/2014 passed by the learned Chief Court as well as the judgments/orders

of the learned courts below. In our considered view, the case has to be decided on merit rather it was disposed off on technical grounds which is not tenable in law.

6. In view of the above discussions, we convert this petition into an appeal and the same is allowed. Consequently, the impugned order dated 04.05.2016 in Writ Petition No. 77/2014 passed by the learned Chief Court as well as the judgment dated 11.06.2014 passed in Civil Revision No. 06/2013 by the learned District Judge Ghizer are set aside. The order dated 12.12.2012 in Civil Misc. Appeal No. 43/2012 passed by the learned Trial Court is maintained, however, the cost imposed of Rs. 7000/- is remitted. The Civil Suit No. 28/2008 be treated as pending adjudication. The case is remanded back to the learned Trial Court Gupis/Yasin to hear and decide the said Civil Suit No. 28/2008 afresh on its own merits without being influenced by any of the observation(s) earlier made by its own court, First Appellate Court, Revisional Court and/or by this Court. The parties are directed to maintain the status quo till the cognizance is taken by the learned Trial Court.

7. The appeal is allowed in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?