

**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. 49/2017
In
CPLA No.74/2016.**

Muhammad Ayub

Petitioner.

Versus

Dr. Sikandar Hayat

Respondent.

PRESENT:-

1. Mr. Mir Akhlaq Hussain Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. Mr. Amjad Hussain Advocate alongwith Mr. Johar Ali Khan Advocate-on-Record on behalf of the respondent.

DATE OF HEARING: - 20.09.2017.

ORDER.

This petition has arisen out of the impugned order dated 01.03.2016 passed by the learned Chief Court whereby the CFA No. 03/2012 filed by the petitioner was dismissed holding it meritless by maintaining the order dated 24.04.2009 of the learned Senior Civil Judge Skardu., hence, this petition for leave to appeal. This court vide order dated 24.11.2016 issued notice to the respondent and the case is heard today.

2. The learned counsel for the petitioner submits that the respondent filed a Civil Suit No. 17/2008 in the court of learned Senior Civil Judge Skardu for recovery of Rs.10 millions as damages for defamation. Upon hearing the said suit was decreed ex-parte by the learned Civil Judge vide order dated 24.04.2009 without

framing the issues. The said order was upheld by learned Chief Court vide impugned order dated 01.03.2016 by dismissing the appeal of the petitioner. Per learned counsel, no summon/notice was served upon the petitioner by the learned Trial Court or by the respondent. Similarly, the legal requirements have not been fulfilled by the learned Trial Court as well as by the learned Chief Court. He submits that the reporter and the Editor of the newspaper have not been impleaded as necessary party. Per learned counsel, the impugned order as well as the order passed by the learned Trial Court are not sustainable. He prays that the said impugned order passed by the learned Chief Court and the order of the learned Trial Court may graciously be set aside in circumstances.

3. On the other hand, the learned counsel for the respondent supports the impugned order passed by the learned Chief Court. He contends that ample opportunities were provided to the petitioner to appear and defend his case but he did not turn up in spite of issuance of notices to him. He also contends that the petitioner filed Civil Miscellaneous No. 54/2010 in the learned Trial Court for setting aside its order dated 24.04.2009. The said application under Order 9 Rule 13 CPC was barred by time for a period of 03 months and 25 days which was also rightly dismissed by the learned Trial Court. Per learned counsel, the impugned order as well as the order passed by the learned Trial Court are well reasoned and well founded, hence, the same may pleased be maintained.

4. We have heard the learned counsels for respective parties at length, perused the material on record and gone through the impugned order as well as the orders of the learned Trial Court. Admittedly, the legal requirements were not fulfilled by the learned Courts below, hence, the impugned order as well as the orders passed by the learned Trial Court are not well reasoned and well founded.

5. In view of the above discussions, we convert this petition into an appeal and the same is allowed. Consequently, the impugned order dated 01.03.2016 passed by the learned Chief Court and the order dated 24.04.2009 passed by the learned Trial Court are set aside. The case is remanded back to the learned Trial Court to hear and decide the same afresh in accordance with law without being influenced by any of the observation(s) earlier made either by the learned Chief Court or by the learned Trial Court itself.

6. The appeal is allowed in above terms.

Chief Judge.

Judge.