

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
(Appellate Jurisdiction)

**PRESENT:**

*Ch. Muhammad Ibrahim Zia, C.J.*  
*Raja Saeed Akram Khan, J.*

Civil Appeal No.231 of 2018  
(PLA filed on 05.09.2018)

Sajid Hussain son of Khadim Hussain, r/o  
House No.469, Sector F/3 Part 4, District  
Mirpur.

.... APPELLANT

**VERSUS**

1. Mahroof Hussain son of Muhammad Rasab, r/o Sangot Dhoke Rachayal, Tehsil and District Mirpur.
2. Municipal Corporation Mirpur through Administrator Municipal Corporation, Mirpur.
3. Administrator Municipal Corporation, Mirpur.
4. Estate Officer Municipal Corporation, Mirpur.

....RESPONDENTS

(On appeal from the judgment/order of the High Court dated 07.07.2018 in revision petition No. 117 of 2017)

FOR THE APPELLANT: Mr. Muhammad Nadeem Raja, Advocate.

FOR RESPONDENT NO.1: Mr. Muhammad Siddique Chaudhary, Advocate.

*Date of hearing:* 20.12.2018.

**JUDGMENT:**

**Raja Saeed Akram Khan, J.**— The titled appeal by leave of the Court has been directed against the judgment/order of the High Court dated 07.07.2018, whereby the revision petition filed by the appellant, herein, has been dismissed.

2. The facts necessary for disposal of this appeal are that respondent No.1, herein, filed a suit for specific performance of contract along with the perpetual injunction in respect of Plots No.204-C and 204-D, situate at Sub-

Sector C/3, Mirpur, against the appellant, herein, in the Court of District Judge, Mirpur on 20.02.2014. During pendency of the suit, an application for amendment in the plaint was filed by respondent No.1, herein. The trial Court after hearing the parties dismissed the application vide order dated 25.03.2015. Feeling dissatisfied from the said order, the plaintiff-respondent No.1, herein, filed a revision petition before the High Court on 23.04.2015. After necessary proceedings, the learned High Court accepted the revision petition vide judgment/order dated 26.04.2015 and directed the plaintiff-respondent No.1, herein, to file the amended suit before the trial Court within a week time. Against the judgment/order of the learned High Court, the appellant, herein, filed a petition for leave to appeal before this Court. This Court granted leave and finally dismissed

the appeal vide judgment date 24.01.2017. Thereafter, the plaintiff-respondent No.1, herein, filed amended plaint before the trial Court on 27.02.2017, but the defendant-appellant, herein, raised an objection that the same cannot be filed after expiry of the period fixed by the High Court. The learned District Judge after hearing the counsel for the parties vide its order dated 14.03.2017, while extending the time, allowed the plaintiff-respondent No.1, herein, to file the amended plaint. Against the said order, the appellant, herein, approached the High Court by filing a revision petition which has been dismissed through the impugned judgment dated 07.07.2018, hence, this appeal by leave of the Court.

3. Mr. Nadeem Ahmed Raja, Advocate, while appearing on behalf of the appellant submitted that the judgments/orders passed

by the learned District Judge and the learned High Court are against law and the facts, which are not sustainable in the eye of law. He submitted that in the previous round of litigation the learned High Court vide order dated 26.05.2016, while accepting the revision petition allowed the plaintiff-respondent to file amended suit within a week time. In the light of the order of the High Court the plaintiff-respondent was bound to file the amended suit within the stipulated period which was to elapse on 02.06.2016, but he failed to comply with the order of the Court. The observation made by the learned High Court in the impugned judgment that the respondent could not file the amended plaint within one week due to filing of petition for leave to appeal (PLA) before the Supreme Court, is factually incorrect as the PLA was filed on 21.06.2016 much after the expiry of the time fixed by the

High Court. The learned counsel further submitted that if for the sake of arguments the observation made by the High Court is admitted as correct even then the amended plaint has not been filed within time as the appeal of the appellant was decided by this Court on 24.01.2017 and the judgment was announced on 26.01.2017, in presence of the counsel for the parties, but despite that the plaintiff did not file the amended plaint within week time after dismissal of the appeal. The learned District Judge failed to exercise the jurisdiction in a judicious manner and illegally extended the time for presenting the amended plaint and the learned High Court has also failed to consider this aspect of the case. He requested for acceptance of appeal.

4. On the other hand, Mr. Muhammad Siddique Chaudhary, Advocate, the learned counsel for respondent No.1 submitted that

the impugned judgment of the learned High Court is perfectly legal which is not open for interference by this Court. He submitted that initially the amendment was disallowed by the learned trial Court and on revision petition the learned High Court allowed the same with the direction to file the amended plaint within a week time, but the said judgment/order of the learned High Court was challenged by the appellant before this Court by filing PLA due to which the order/direction of the learned High Court could not be complied with. The learned trial Court keeping in view the peculiar facts and circumstances of the case has rightly extended the time for filing amended suit and the learned High Court has not committed any illegality while upholding the order of the trial Court. He referred to relied upon the case reported as *Muhammad Latif vs. Muhammad*

*Azeem & 3 others* [2004 SCR 132] and prayed for dismissal of appeal.

5. We have heard the learned counsel for the parties and gone through the impugned judgment/order along with the other material available on record. The background of the controversy involved in the matter in hand is that the learned High Court vide order dated 26.05.2016, while exercising the revisional jurisdiction allowed an application filed by the plaintiff-respondent for amendment in the plaint with the direction to file the amended suit within a week time. The appellant, herein, challenged the said order of the High Court before this Court and this Court finally decided the matter on 24.01.2017. After dismissal of the appeal by this Court, the plaintiff-respondent presented the amended plaint in the trial Court on 27.02.2017. The defendant-appellant, herein, raised an objection that the



amended plaint cannot be presented after expiry of the time given by the learned High Court, but the trial Court refused to accept the claim of the appellant and while extending the time allowed the plaintiff to file the amended plaint and the learned High Court also maintained the order passed by the trial Court through the impugned judgment/order. For resolution of the controversy, discussed hereinabove, we have sought the guidelines from the statutory provisions i.e. Rule 18 of Order VI, CPC. For proper appreciation the same is reproduced here which reads as under:-

“18. **Failure to amend after order---** If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the

order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.”

The statutory provision shows that if the amendment is allowed to a party by the Court while fixing a time period, then such party shall make the amendment within the stipulated time and if no time is fixed then the amendment shall be made within fourteen days of the order of the Court. After expiry of the time, either fixed by the Court or fourteen days from the order, the amendment is not permissible. In the case in hand, the learned High Court directed the plaintiff-respondent No.1, herein, to file the amended plaint within a week time vide its judgment/order dated 26.05.2016, but he failed to comply with the Court order. Thus, in view of the statutory

provision after expiry of the time fixed by the learned High Court the amendment was not permissible. There is no quarrel with the stance taken by the learned counsel for the respondent that under law the Court is empowered to extend the time, but it is also well established principle of law that the discretion must be exercised in a judicious manner and the same cannot be exercised arbitrarily or fancifully by taking away the valuable rights already accrued to a party by lapse of time. In the case in hand, the time was fixed by the High Court and in the stipulated time the respondent neither filed amended suit before the trial Court nor approached the High Court for extension of time rather after a period of more than one month from the dismissal of appeal, filed by the appellant, by this Court, he presented the amended suit in the trial Court, thus, due to

carelessness and negligence of the respondent a valuable right had been accrued to the other party which could not be taken away without furnishing sufficient cause. The learned High Court in the impugned judgment/order has observed that as the order of the High Court was challenged before the apex Court, therefore, the amended plaint could not be filed, we do not agree with this observation on the ground that PLA was filed before this Court long after the expiry of the time fixed by the High Court. It may be observed here that it is settled principle of law that all litigant public is required to be vigilant and not indolent in prosecuting their cases before a Court of law and without sufficient cause or reason a discretionary power cannot be exercised in favour of a person which is indolent or negligent and does not obey the orders of the Court. In the matter in hand the trial Court

extended time arbitrarily and the learned High Court has also failed to take notice of the illegality committed by the trial Court, hence, the judgments/orders passed by the Courts below are bad in law which are liable to be set aside. The case law relied upon by the learned counsel for the respondent is not applicable in the case in hand, as the facts and circumstances of the referred case law are quite different.

The nutshell of the above discussion is that this appeal is accepted and the impugned judgments/orders passed by both the Courts below are hereby set aside, consequently, the permission for filing of amended suit is refused. No order as to costs.

**JUDGE**

**CHIEF JUSTICE**

Muzaffarabad,  
\_\_\_ .01.2019.

