SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raza Ali Khan, J.

Civil PLA No. 47 of 2022

(Filed on 26.04.2022)

M/s Paider Builder Private Limited r/o Flat No. 16 Second Floor 136 Mini Market Lahore, through Khalil-ur-Rehman, Engineer Chief Executive.

……PETITIONER

VERSUS

1. Azad Jammu & Kashmir Council through Secretary Azad Jammu & Kashmir Council.
2. Deputy Chief Planning AJK Council.
3. Joint Secretary AJK Council, Islamabad.
4. Section Officer AJK Council, r/o Council House No. 39, Street No. 28, Sector F6/1, Islamabad.
5. M/s Technica EPC-JV, (Consultants), House No. 467, street No. 10, Sector F-10, Islamabad.

…..RESPONDENTS

[On appeal from the judgment of the High Court dated 25.02.2022 in civil appeal No. 115 of 2016]

FOR THE PETITIONER: Mr. M. Zubair Raja, Advocate.

FOR THE RESPONDENTS: Nemo.

Date of hearing: 20.06.2022.

ORDER:

Raza Ali Khan, J.– The captioned petition for leave to appeal has been directed against the judgment of the High Court of Azad Jammu & Kashmir, dated, 25.02.2022, whereby, the appeal filed by the respondents, herein, has been accepted.

2. The relevant and necessary facts forming the background of the captioned petition for leave to appeal are that plaintiff-petitioner, herein, filed a suit for declaration, settlement of accounts and cancellation of order dated 26.06.2007, before the District Judge, Bhimber, stating therein, that the AJK Council through its Consultants, M/s Technica International, invited bids for construction of District

Audit and Accounts Office and Income Tax Office at Bhimber. The plaintiff-petitioner, herein, participated in the biding process and being a successful bidder was awarded the work vide order dated 04.10.2003. It was alleged that the site was handed over to the plaintiff on 06.01.2004, which was different one as shown to him before issuance of the contract; the plaintiff apprised the consultant in this regard, whereupon, the revised layout plan was provided on 21.01.2004. It was further alleged that the plaintiff's company started work at the site on 21.01.2004 and after having a part of construction work done on the site, the plaintiff submitted 1st bill to the consultant company which was sent to Council on 05.07.2004 and the bill was paid accordingly. It was further alleged that on 01.09.2005, the petitioner, herein, was served with the letter wherein he was declared to be

liable to pay penalty due to delay in starting construction upon the site. It was claimed that the plaintiff submitted 8th running bill to the defendants which was passed with the deduction of an amount of Rs. 281,000/- as penalty for delay in completion of work and almost an amount of Rs. 1691520/- was deducted from his total payment as penalty without justification. On filing of the suit, the defendants were summoned who appeared before the Court and filed written statement, wherein, the claim of the plaintiff was negated. The learned trial Court at the conclusion of the proceedings vide judgment and decree dated 25.02.2016, decreed the suit and the plaintiff-petitioner, herein, was held entitled for payment of Rs. 1691500/- whereas, order dated 26.06.2007, was also set-aside. The respondents filed appeal before

the High Court, which has been accepted through the impugned judgment.

3. Mr. Muhammad Zubair Raja, the learned Advocate appearing for the petitioner after narration of the necessary facts submitted that the impugned judgment of the High Court is quite against law, the facts and the record of the case. He submitted that the learned trial Court after detailed scrutiny of the record and evidence of the parties has passed the judgment and decree which has illegally been set-aside by the High Court. He argued that the learned High Court without application of judicial mind has remanded the case to the trial Court for decision afresh which has put the parties into further litigation, hence, the impugned judgment is liable to be set-aside. He further argued that the most important issue

was issue No. 6 upon which, the learned trial Court has recorded findings after detailed deliberation as is evident from the judgment of the trial Court, but the learned High Court has not gone through the record in its true perspective and remanded the case to the trial Court which is not sustainable. The learned Advocate placed reliance on the case reported as *Azmat Bibi & another vs. Muhammad Laal*, [2008 SCR 300], and submitted that in the light this judgment, the Court is not bound to record findings on all the issues. He finally prayed that question of law of public importance is involved in the case, therefore, grant of leave is justified.

4. I have heard the learned Advocate for the parties and have gone through the record of the case along-with the impugned judgments. The learned

counsel for the petitioner relied upon the case (supra) wherein, it has been observed that the Courts are not bound to record their findings on all issues. We have no cavil with the observation (ibid) and the contention of the learned counsel for the petitioner, but at the same time the Courts should be convinced that the finding on one or more issue is sufficient for disposal of the case. In the case in hand the learned trial Court framed fourteen issues and recorded issued wise findings on issue No. 1 to 6, whereas, regarding the rest of the issues, it has been observed that the in view of the findings recorded in issue No. 6, other issues need not to be attend. Now, it has to be examined that whether issue No. 6, covers the claim of the both the parties and the findings recorded on the said issue is sufficient for determination of controversy involved in the case? A cumulative

appreciation of the record, evidence and issue No. 6 transpires that issue No. 6 has not been decided in the light of version of both the parties. For determination of the liabilities of both the parties in inclusive manner, it was incumbent upon the trial Court to record findings on all the issues, therefore, the learned High Court has rightly observed in the impugned judgment that in the instant case, the findings recorded only on a specific issue is not sufficient for the decision of the suit, hence, the case has rightly been remanded to the trial Court to decide afresh keeping in view the guideline provided under Order XX Rule 5, CPC.

5. Even otherwise, leave cannot be granted in routine. It can only be granted where the question of law of public importance is involved in the case. The

question of law is that which involves interpretation of law, rules, instructions, notifications or governmental policy and that has not been finally settled by the Supreme Court in its earlier decisions or is not free from difficulty or ambiguity or requires discussion of alternative views. It highlights a state of uncertainty in law, arising from a contradictory precedent or that points out blatant abuse of due process, whereas, a mere factual inter-party dispute, devoid of the nature of question of law, mentioned above, will not attract the jurisdiction of this Court, while, the expression 'public importance' is not capable of any precise definition and has not a rigid meaning. It can only be defined by a process of judicial inclusion or exclusion and each case has to be judged in the circumstances of that case as to whether the question of public importance is involved. But it is a settled law that

public importance must include a purpose or claim in which the general interest of the community as opposed to the particular interests of the individuals is directly and vitally concerned. Reliance can be placed on the judgment of the Supreme Court of Pakistan in the case reported as *Allah Diwaya vs. The State,* [PLD 1969 SC 98], wherein, it has been observed that: -

> *"We may observe there that an appeal by special leave is not an appeal as of right nor is it an appeal in the ordinary course; therefore, such leave cannot be granted as a matter of routine nor can petitions for special leave to appeal be heard as if they were appeals themselves. The difference is that when ordinary appeals are heard they are subject to preliminary technical objections, if any, firstly examined on merits for judging their fitness for calling upon the respondent to defend; and if such merit is prima facie found to exist in them, then they are heard again after notice to the opposite-party. Since these petitions are not appeals, the petitioners had to satisfy this Court that there was some unusual or exceptional reason for*

> *granting leave to them to make submissions before this Court on the merits of their cases. They could not expect these petitions to be heard like the hearing of an appeal in limine."*

In the light of above, as no question of interpretation of law is involved, therefore, leave is refused. Petition is dismissed.

JUDGE

Mirpur,
20.06.2022.