IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KHAWAJA M. NASIM
MR. JUSTICE RAZA ALI KHAN

CIVIL APPEAL NO. 311 OF 2023

(Against the judgment dated 20.06.2023, passed by the High Court in family civil appeal No. 119 of 2022)

Chairman Red Cresent Islamabad and others.

…Appellants

VERSUS

Raja Tayyab Mehmood and another.

…Respondents

Appearances:

For the Appellants:	Mr. Saqib Ahmed Abbasi, Advocate.
For Respondent No. 1:	Raja Ayaz Ahmed, Advocate.
Date of hearing:	06.02.2025

ORDER:

***Raza Ali Khan, J*:-** The instant appeal, filed with the leave of this Court, assails the judgment pronounced by the High Court on 20.06.2023, whereby the appeal preferred by the appellants herein was dismissed.

2. The factual matrix underpinning the present appeal reveals that the appellants filed an application before the learned District Judge, Bagh, seeking annulment of the ex-parte decree dated May 10, 2022 as well as the ex-parte proceedings initiated on 16.04.2022. It was averred therein that the appellants had been diligently pursuing the matter; however, their inability to appear before the Court on the relevant date was due to the holy month of Ramzan-ul-Mubarak. Additionally, it was contended that the clerk of the counsel, namely Roshan Din Awan, a resident of District Jhelum Valley, was also precluded from attending the proceedings due to unavoidable exigencies. In light of these circumstances, the appellants prayed for the setting aside of the ex-parte decree and the preceding ex-parte proceedings. The respondents, however, filed objections, vehemently contesting the appellants' stance and refuting their assertions. Upon hearing the parties, the learned District Judge, Bagh, dismissed the application through a judgment dated July 21, 2022. Aggrieved by the said determination, the appellants preferred an appeal before the High Court, which, however, culminated in the same adverse outcome, as the impugned judgment dated June 20, 2023 upheld the rejection of their application.

3. Mr. Saqib Ahmed Abbasi, Advocate, the learned counsel for the appellants, after articulating the relevant factual backdrop, forcefully contended that the impugned judgments rendered by the Courts below are erroneous, being contrary to the settled principles of law, procedural mandates, and the factual context of the case. He argued that the appellants had demonstrated cogent and sufficient grounds before the learned District Judge, Bagh, warranting the annulment of the ex-parte proceedings; however, the Court, without properly appreciating the material placed before it, arbitrarily dismissed the application. The learned counsel further challenged the judgment of the High Court, asserting that the dismissal of the appellants' appeal was devoid of lawful justification. He specifically took exception to the High Court's reliance on the purported non-compliance with Section 29 of the Azad Jammu & Kashmir Law Department Manual, 2016, as the primary basis for rejecting the appeal. He emphasized that the Pakistan Red Crescent is an autonomous entity and, by virtue of its legal status, any registered organization possesses the competence to institute legal proceedings, including the filing of suits and appeals, in its own name without requiring prior sanction from the government. He contended that the learned High Court failed to take into consideration this fundamental legal position, thereby rendering its decision legally unsustainable. Additionally, he contended that the appellants had categorically maintained before the High Court that they neither entered into any contractual arrangement with the respondent nor issued any official communication authorizing the hiring of vehicles from him. Despite the absence of any legal obligation on their part, the respondent proceeded to file a suit against them, holding them accountable for actions

allegedly committed in a personal capacity by an individual over whom they had no control. Notwithstanding these crucial legal and factual aspects, the learned High Court erroneously dismissed the appeal. In view of the foregoing, the learned counsel fervently prayed for the acceptance of the instant appeal and the setting aside of the impugned judgments.

4. Conversely, Raja Ayaz Ahmed, Advocate, the learned counsel representing the respondents, staunchly supported the impugned judgments, contending that they are firmly grounded in law and require no intervention by this Court. He argued that the Courts below have rendered well-reasoned and comprehensive judgments, reflecting a judicious appreciation of the evidence and legal principles, thereby warranting no discretionary intervention. The counsel further asserted that the appellants failed to establish sufficient cause for their non-appearance before the learned District Judge, Bagh, and consequently, their application under Section 12(2) of the Code of Civil Procedure (CPC) was rightly dismissed. In conclusion, he earnestly prayed for the dismissal of the appeal, underscoring that the appellants have not met the requisite threshold to merit any relief from this Court.

3. Upon meticulous examination of the arguments advanced by the learned counsel for the parties and careful scrutiny of the record available on file, it emerges that the respondent, Raja Tayyab Mehmood Ashraf, instituted a suit for specific performance of an agreement and recovery of Rs. 896,000/- before the learned District Judge, Bagh, on November 09, 2021. On the said date, ex-parte proceedings were initiated against

defendant No.1. However, on the subsequent date, i.e., November 30, 2021, defendant No.1 moved an application seeking the setting aside of the ex-parte proceedings, which was duly allowed, whereupon he expressed his intention to file a power of attorney. Consequently, the matter was adjourned to December 15, 2021. On the given date, Sardar Maqsood Mughal, Advocate, formally submitted his power of attorney on behalf of the defendants, and the case was scheduled for submission of a written statement on January 03, 2022. Despite multiple adjournments, the defendants failed to file their written statement. On March 05, 2022, Sardar Zaheer Mughal, Advocate, appeared on behalf of the defendants but did not submit the requisite written statement. Similarly, on April 05, 2022, Sardar Zaheer Mughal, Advocate, once again appeared instead of the principal counsel for the defendants and was categorically directed to ensure the filing of the written statement, failing which the defendants' right to defend would be forfeited. The matter was accordingly adjourned to April, 16, 2022. However, on the said date, neither the defendants nor their counsel appeared before the Court, resulting in ex-parte proceedings against them. Thereafter, on April 25, 2022, ex-parte evidence was recorded, and upon culmination of the necessary legal formalities, the learned trial Court proceeded to hear ex-parte arguments and ultimately decreed the suit in favor of the plaintiff/respondent vide judgment and decree dated May 10, 2022.

4. Aggrieved by the said ex-parte judgment and decree, the appellants, herein, preferred an application before the learned District Judge, Bagh, seeking the

annulment of the ex-parte decree dated May 10, 2022 as well as the ex-parte proceedings dated April 16, 2022, citing various grounds. However, after affording a due opportunity for hearing to both parties, the learned District Judge, Bagh, dismissed the application through a judgment dated July 21, 2022. Feeling aggrieved by the said rejection, the appellants assailed the judgment before the Honourable High Court, which, vide its impugned judgment dated 20.06.2023, upheld the findings of the learned District Judge and dismissed the appeal.

5. It is pertinent to observe that the decree rendered by the learned trial court has been passed not only against the appellants herein but also against the Pakistan Red Crescent Society, District Branch Bagh (hereinafter referred to as *PRCS DB Bagh*) through its District Secretary. However, it is noteworthy that only the appellants have pursued the legal remedy by filing an application for the setting-aside of the ex-parte decree before the learned District Judge, Bagh, and subsequently challenging the same before the High Court and this Court, whereas defendant No.1 has remained inactive and has not sought the annulment of the ex-parte decree before the trial court. The record unequivocally establishes that the sole issue requiring adjudication in the present proceedings pertains to setting-aside of the ex-parte decree. However, during the course of arguments, this Court posed a specific query to the learned counsel for both parties regarding the execution of the decree in its current form against the appellants. Despite being afforded multiple opportunities to address this crucial legal aspect, the learned counsel failed to provide a satisfactory response. Consequently, this court

considers it appropriate to determine the issue independently. Upon a careful perusal of the record, it transpires that the genesis of the dispute lies in an agreement executed on August 26, 2019 between PRCS DB Bagh and Raja Tayyab Mehmood Ashraf under the *Vulnerability to Resilience Project* for a duration of one year. Under the terms of the agreement, the lessee undertook to pay a monthly rent of Rs. 80,000/- to the lessor. However, despite the execution of the agreement and the utilization of the vehicle, the lessee failed to discharge the agreed rental payments. Aggrieved by such non-compliance, the respondent instituted a suit for specific performance before the learned trial court, wherein he sought relief not only against the appellants but also against PRCS DB Bagh. Upon conclusion of proceedings, the learned trial Court decreed the suit in favor of the respondent as prayed for.

6. The pivotal issue requiring adjudication in the present case pertains to the fact that the agreement in question was executed solely between PRCS DB Bagh and the respondent, without any contractual relationship involving the appellants. A perusal of Ex-A, available at page 8 of the trial Court's record, unequivocally establishes that the contractual arrangement was between PRCS DB Bagh and the respondent, with no legal or factual nexus connecting the appellants to the said agreement. It is imperative to note that the Pakistan Red Crescent Society, Azad Jammu & Kashmir State Branch was constituted as an independent statutory entity through an Act of the Legislative Assembly in 2001. Given its autonomous legal status, it operates independently of the appellants, who include the Chairman Red Crescent Islamabad, Director of

Operations Pakistan Red Crescent Islamabad, and Secretary General Pakistan Red Crescent Islamabad. The appellants, in their official capacities, have no administrative or financial control over the affairs of PRCS, Azad Jammu & Kashmir, nor do they bear any contractual liability arising from the agreement in dispute. Consequently, while passing the impugned decree, the learned trial court failed to appreciate this fundamental distinction, resulting in a decree that is, in its present form, legally unenforceable against the appellants.

7. With regard to the decree passed against PRCS DB Bagh (defendant No.1), we are of the considered view that the learned trial court rightly decreed the suit against it. The foundational agreement was executed between defendant No.1 and the respondent, thereby rendering defendant No.1 solely responsible for the payment of Rs. 896,000/-. The appellants, having no privity of contract with the respondent, bear no legal obligation to discharge the said amount. Consequently, in the exercise of powers conferred upon this Court under Article 42-A of the Azad Jammu and Kashmir Interim Constitution, 1974, read with Order XLIII Rule 5 of the Azad Jammu and Kashmir Supreme Court Rules, 1978, the judgment and decree dated May 10, 2022 is set aside to the extent of the appellants for being legally non-executable against them. However, since defendant No.1 (PRCS DB Bagh), despite having the opportunity, neither challenged the ex-parte decree nor sought its cancellation, the judgment and decree dated 10.05.2022, to the extent of defendant No.1, is hereby upheld and sustained. Consequently, Pakistan Red Crescent District Branch Bagh, through its District Secretary, remains liable for compliance with the decree.

In view of the aforementioned discussion, the decree passed by the trial court is modified in the following terms that "***the plaintiff is entitled to receive an amount of Rs. 896,000/- from defendant No. 1***".

The appeal stands accepted.

JUDGE **JUDGE**

Muzaffarabad,
10.02.2025