

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR**

(Judicial Department)

**C.R No. 1031-P/2023
With C.M No.1988-P/2023**

***Zubair Ul Haq
versus
Izhar Ul Haq etc.***

For petitioner(s): Mr. Muhammad Aqil Khan, Advocate.

For respondent(s): Mr. Munsif Saeed, Advocate.

Date of hearing **22.05.2025**

JUDGMENT

MUHAMMAD FAHEEM WALLI, J.- The petitioner, through this Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 has challenged the judgment dated 06.11.2023, passed by the learned Additional District Judge-I, Swabi at Lahor, who maintained the judgment and decree dated 06.01.2022 passed by the learned Senior Civil Judge (Judl), Lahor, Swabi.

2. The brief facts of the case are that the plaintiffs/respondents instituted a suit seeking possession through partition and permanent injunction to the extent of their share in the disputed constructed house measuring 01 kanal 06 marla, situated at Mouza Jalbai, Tehsil Lahor, Swabi. It was asserted that the disputed house is jointly owned by the parties and that the plaintiffs/respondents are owners to the

extent of their respective shares. The plaintiffs/respondents further stated that the defendant/petitioner was repeatedly requested to acknowledge and concede their claim, but without success. The petitioner was summoned, who appeared before the court, and filed a written statement. During the proceedings, on 06 January 2022, the parties amicably settled the matter and recorded their joint statement to that effect. The learned trial court, after conducting summary proceedings, passed a preliminary decree of partition through judgment and decree dated 06 January 2022. The petitioner, being dissatisfied with the said decree, preferred an appeal which was dismissed by the learned Additional District Judge-I, Swabi at Lahor, vide the impugned judgment and decree dated 06 November 2023. The petitioner, aggrieved by the judgments and decrees of both the lower courts, has now preferred the instant revision petition.

3. Arguments of learned counsel for the parties heard and with their valuable assistance, record perused.

4. Before addressing the other merits of the case, the learned counsel for the respondents raised a preliminary objection regarding the maintainability of the appeal filed before the appellate court. He referred to the mandatory provision of sub-section 3 of section 96 of the Code of Civil Procedure 1908 (CPC), which prohibits the filing of an appeal against a decree passed with the consent of the parties. He submitted that the decree passed by the Civil Court was admittedly based on mutual consent, thereby barring the petitioner from filing an

appeal before the appellate forum. He further argued that the decision of the appellate forum is coram non judice and, therefore, no further revision is permissible against that order. He also contended that the revision petition is time-barred as no condonation of delay was sought. However, this contention of the learned counsel for the respondents is misconceived. The Code of Civil Procedure 1908 has undergone significant amendments in the province of Khyber Pakhtunkhwa through the Khyber Pakhtunkhwa Act XLIX of 2020 (Khyber Pakhtunkhwa Code of Civil Procedure (Amendment) Act, 2020)¹, which came into force on 28.12.2020. By virtue of this amendment, the original section 96 of the CPC 1908 was substituted, and sub-sections 2 and 3 were deleted. As a result, sub-sections 2 and 3 of section 96 are no longer applicable in the province of Khyber Pakhtunkhwa. In light of the amended law, the objection raised by the learned counsel for the respondents regarding the maintainability of the present revision petition stands negated. The appeal against the consent decree was competently filed by the petitioner, and the subsequent revision petition is also held to have been filed in accordance with law.

5. Reverting to the merits of the case, the petitioner has challenged the reliance placed by the Civil Court/trial court upon the joint statement of the parties while granting the preliminary decree

¹ <https://kpcode.kp.gov.pk/homepage/lawDetails/1433>

for partition of the suit property. The petitioner contends that, in his joint statement, he only admitted the relationship of heirship among the parties from the late Aziz Ul Haq. However, he did not admit that the suit house formed part of the legacy of the late Aziz Ul Haq. His consistent claim is that the property is his exclusive ownership, having been purchased through unregistered deed No. 27/30 dated 17.09.2008 from his father, upon payment of Rs. 12, 50,000/-. He further asserts that he has remained in exclusive possession of the property since the date of purchase.

6. I would like to address contentions and submissions of the petitioner in the present civil revision petition. The petitioner asserts that he only admitted the parties to be the legal heirs of the late Aziz Ul Haq in the joint statement before the court. However, he did not admit that the suit house was owned by the late Aziz Ul Haq.

As to the first submission of the petitioner, a perusal of the record reveals that the petitioner both thumb-impressed and signed the joint statement recorded before the trial court on 06.01.2022. The petitioner did not deny his thumb impression or signature either before the appellate forum or before this court in his appeal and civil revision. Secondly, there are contradictions between the contents of the appeal and the present civil revision. In paragraph C of the grounds of civil revision before this court, the petitioner admits that a joint statement was recorded by the trial court. However, in paragraph 3 of the appeal before appellate forum, he claims that the

trial court merely asked the parties whether they were the legal heirs of Aziz Ul Haq, to which he replied in the affirmative. This implies that he is denying the joint statement in the appeal while admitting it in the civil revision, thus reflecting inconsistency in his pleadings. Thirdly, in the present civil revision, the petitioner confirms his appearance before the trial court and acknowledges the recording of the joint statement. His only objection is that his thumb impression was obtained without the contents of the joint statement being read out to him. This contention is not supported by the facts and circumstances of the case. The order sheet dated 10.12.2021, which precedes the impugned preliminary decree, shows that the parties were directed to appear in person. This indicates that it was the petitioner who expressed willingness to compromise the matter. On the date fixed, the petitioner admitted the stance of the respondents regarding the suit house. Although the original record has not been requisitioned, a copy of the order sheet dated 10.12.2021 has been produced at the bar and is also referred to in the judgment of the appellate court. The joint statement was recorded by a competent court of law, and it carries judicial sanctity. It cannot be presumed that the Civil Court, while recording the joint statement, failed to explain the legal implications to the parties or that it obtained thumb impressions without reading the contents of the statement and allowing adequate time for consideration. The joint statement contains the notation "RO&AC" above the thumb impressions of the

parties, which stands for “read over and admitted correct.” As per Article 129(e) of the Qanun-e-Shahadat Order, 1984, it is to be presumed that judicial and official acts have been regularly performed, and this case is no exception. In the case of *Syed Ali Ahmed shah Vs Syed Shaukat Hussain Shah*², the apex court held that it is settled legal position that presumption of correctness and sanctity is attached to all judicial proceedings, orders, decisions and the judgments passed by the Courts, whereas, the same can be assailed by an aggrieved party by filing appeal, revision as may be provided in accordance with law. Similarly, in *Asad Abbas case*³, the apex court held that:-

“This fact has been noted by the learned High Court in paragraph 6 of the impugned judgment and according to the dictates of Article 91 of the Qanoon-e-Shahadat Order, 1984, judicial proceedings have got sanctity and a presumption of correctness is attached to the proceedings before a judicial forum⁴.

In the case of *farzana Rasool Vs Dr Muhammad Bashir*⁵, the apex court elaborated in the following words:-

² 2025 SCMR 361

³ GOVERNMENT OF PUNJAB through Secretary Cooperative Societies Department vs ASAD ABBAS (2022 S C M R 739)

⁴ Muhammad Ramzan v. LDA (2002 SCMR 1336), Fayyaz Hussain v. Akbar Hussain (2004 SCMR 964), Waqar Jalal Ansari v. National Bank of Pakistan (2008 CLD 1202),

⁵ 2011 SCMR 1361

“Undertaking given by a party in the Court of law has to be given sanctity because on one hand there is a legal estoppel and on the other moral and ethical against it. Such retraction cannot be allowed because the same would result in distrust of the public litigants in the Judiciary and would tarnish the sacred image of the Judicial Officers before whom once a consent is given by making a statement on oath and later on withdrawn, therefore it would become a mockery of law and facts. If such practice is allowed to prevail and is ignored by the Courts, it cannot add to the trust of public litigants in the Judiciary and Judicial system but would reflect on lack of trust in the Judiciary, which cannot be permitted because sanctity to the judicial proceedings has to be preserved at any cost.”

In the light of judgments of apex court coupled with article 91 and 129 (e) of The Qanoon Shahadat Order 1984, strong presumption of correctness and sanctity of high order is attached to judicial proceedings and records and to outweigh the same, strong and unimpeachable evidence is required⁶. The other plea of the petitioner that he misunderstood the contents of the joint statement and believed it pertained only to other properties of the deceased, excluding the disputed house which he claims as his own, appears to be an

⁶ 2022 SCMR 842, 2022 SCMR 739, 2008 SCMR 1611, 2004 SCMR 964, 2002 SCMR 1336, 2001 SCMR 279,

afterthought. As noted earlier, once the joint statement was recorded and thumb-impressed by the petitioner, he was fully aware that the suit did not concern any other legacy of the deceased but in respect of suit house only and it was solely related to the partition of the suit/disputed house. Therefore, this contention of the petitioner is devoid of substance and lacks reasonableness.

7. As a last resort, the petitioner has raised objection during arguments which is not part of grounds of writ petition that the procedure for summary judgment under Order XV-A of the CPC was not followed by the trial court. As regards this objection, the record indicates that the court, while granting the decree based on the joint statement, proceeded under the summary procedure prescribed in Order XV-A of the Code of Civil Procedure. A plain reading of the judgment passed by the learned Senior Civil Judge shows that although it is titled as a summary judgment, the matter was in fact resolved through a joint statement constituting a compromise. This raises the following legal question.

In cases involving compromise, can the court validly pass a judgment under Order XV-A CPC, or is it required to proceed under Order XXIII Rule 3, which specifically governs the resolution of disputes through compromise or settlement between the parties?

In order to thrash out the controversy, it is expedient to re-produce provisions of Order XV-A CPC and Order XXIII Rule 3 CPC;

ORDER XV-A
SUMMARY JUDGMENT

1. *Application for summary judgment*---Either party may move an application for summary judgment, identifying the whole claim or defense, or each claim or defense, as the case may be, on which summary judgment is sought, or the Court may grant such summary judgment on its own initiative, if-

(a) *it is satisfied that-*

(i) *the respondent has no real prospect of succeeding on such claim or claims or successfully defending such claim or claims, as the case may be; and*

(ii) *there is no genuine dispute as to any material fact requiring a trial and a party is entitled to judgment as a matter of law, or*

(b) *the parties agree to have all or part of the claim determined by a summary judgment and the Court is satisfied that it is appropriate to grant summary judgment.*

2. *Time to file an application*---Subject to the provisions of Order IX-A, unless the Court otherwise directs to prevent injustice a party may file an application for summary judgment or the Court may consider the grant of summary judgment on its own initiative at any time after the close of period allowed to the parties for filing list of documents under rule 1 of the Order XIII.

3. *Evidence for purpose of summary judgment hearing*.
---An applicant asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(a) *citing particular parts of any documentary evidence filed with the Court along with the pleadings; or*

(b) *showing that the documentary evidence cited does not establish the absence or presence of a genuine dispute or that the respondent cannot produce admissible evidence to support the fact;*

Provided; that documentary evidence shall be construed in a manner most favourable to the respondent and any doubts regarding the existence of a genuine issue of material fact shall be resolved against the applicant.

4. Procedure.---(1) When an application for summary judgment is filed, the respondent shall be given at least fourteen (14) days notice of the date fixed for the hearing along with a copy of the application.

(2) The respondent may file a reply to the application for summary judgment, and serve copies on every other party to the application at least seven (07) days before the summary judgment hearing and the applicant may file a rejoinder to the response, and serve copies on every other party to the application at least three (03) days before the summary judgment hearing.

(3) Where the summary judgment hearing is fixed by the Court on its own initiative, any party to the proceedings may file an affidavit citing particular parts of the documentary evidence filed with the Court to support or oppose the notice, issued by the Court to consider grant of summary judgment and serve copies of such affidavit on every other party to the proceedings at least seven (07) days before the summary judgment hearing, and any party may file a response to such affidavit and serve copies on every other party to the proceedings at least three (03) days before the summary judgment hearing.

5. Orders the Court may pass.---After giving notice and allowing the above specified time to respond, the Court may:

- (a) grant summary judgment along with costs.*
- (b) dismiss the application along with costs,*
- (c) grant partial relief in relation to one or more claims or defences identified in the application that shall be deemed to be established, unless the trial judge orders otherwise to prevent injustice; or*
- (d) issue any other appropriate order with directions about the management of the case.*

"ORDER XXIII Rule 3

Compromise of suit.---Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit."

8. Before examining the legal construction of the aforementioned orders of the Code of Civil Procedure, it is appropriate to provide a brief overview of their origin and incorporation into the statute. The scheme of the Code of Civil Procedure, 1908, reveals that it consists of 158 sections and 52 orders. Most of these orders were part of the original text, included in the First Schedule, which, in accordance with Section 121 of the CPC, shall have the same effect as if enacted within the main body of the Code, unless annulled or modified in accordance with the provisions of Part X. To prevent rigidity and to ensure that the rules contained in the First Schedule remain adaptable and effective, the legislature has conferred powers upon the respective High Courts under Section 122 of the CPC. These powers enable the High Courts to frame rules regulating their own procedures and the procedures of civil courts under their supervision. Such rules may annul, amend, or supplement any or all of the rules contained in the First Schedule.

9. Perusal of the order XV-A and order XXIII reveal that order XV-A CPC was inserted in the Code of Civil Procedure through delegated legislation by the Peshawar High Court while order XXIII, also comprising of the relevant rule 3, has throughout remained part of the original text. Although, order XV-A was introduced in the CPC vide notification No.15-J/2018 dated 23.01.2018 which is certainly later in time but at the same time order XXIII was part of the original

text, thus, giving rise to a legal controversy that out of the two provisions of the same statute which one has to be given preference?

10. After introduction of order XV-A, the legislature though empowered the Peshawar High Court under section 122 CPC read with section 121 CPC to annul or alter any of the existing orders/rules but instead of annulling, amending or altering rule 3 of order XXIII, the same remained untouched which translates the intention of the legislature to introduce a distinct procedure for summary trials but at the same time acknowledging the disposal of cases on the basis of compromise as per order XXIII rule 3 and passing a decree in accordance with the agreement, compromise or settlement reached between the parties as far as it relates to the suit. Had the intention of the legislature been otherwise, there would have been no obstacle in striking down the provision of Rule 3 of Order XXIII, or in expressly conferring overriding effect upon Order XV-A over the said provision. By not resorting to any such drastic measure, it can be reasonably inferred that both provisions are co-extensive, yet distinct and independent in their operation. The cumulative effect of the foregoing discussion reveals that these provisions are not in conflict with one another; rather, they are harmonious and supplementary. Accordingly, the court may invoke either of the provisions, depending upon the specific facts and circumstances of the case. In this respect, reliance can be placed on the case of **WAQAR ZAFAR**

BAKHTAWARI Vs Haji MAZHAR HUSSAIN SHAH⁷, wherein the apex court held that:-

It is settled that while interpreting the law, a specific provision of any statute, which is independent in nature, cannot and should not ordinarily be held to be redundant, especially on the touchstone of another independent provision of the same statute; rather all possible efforts should be made to apply and adhere to the rules of purposive and harmonious construction, so that the allegedly conflicting provisions should be reconciled and saved.⁸

Therefore, in order to avoid rendering either Order XV-A of the CPC or Order XXIII Rule 3 of the CPC redundant, a purposive and harmonious interpretation is necessary to preserve the coherence of the law. It is a settled principle that redundancy cannot be attributed to any provision of law. Rather, the wisdom of the legislature must be respected, and in case of any conflict between two provisions, the rule of harmonious interpretation is to be followed.⁹ Therefore, where there is ambiguity, the principle of harmonious construction must be applied to prevent conflicting or contradictory interpretations. In such

⁷ 2018 PLD SC 81

⁸ *Combind Investment (Pvt.) Ltd. v. Wali Bhai* (PLD 2016 SC 730), *Lucky Cement Ltd. v. Commissioner Income Tax, Zone Companies, Peshawar* (2015 SCMR 1494), *Aftab Shahban Mirani v. Muhammad Ibrahim* (PLD 2008 SC 779) *Collector of Sales Tax and Central Excise (Enforcement) v. Messrs Mega Tech (Pvt.) Ltd.* (2005 SCMR 1166) *Mirza Shaukat Baig v. Shahid Jamil* (PLD 2005 SC 530), *D.G. Khan Cement Company Ltd. v. Federation of Pakistan* (2004 SCMR 456)

⁹ P L D 2008 Supreme Court 779

cases, the statute should be read as a whole to derive a practical and accurate meaning that is consistent with its overall spirit and legislative intent¹⁰. Thus, in light of the above, the court may invoke either Order XV-A of the CPC or Order XXIII Rule 3 of the CPC, depending on the specific facts and circumstances of each case.

11. Reverting to the objection raised by the learned counsel for the petitioner regarding the alleged non-observance of the mandatory procedure prescribed under Order XV-A of the CPC. Counsel for the petitioner submitted before the court that once the court opted to proceed under the summary procedure and pass a summary judgment in terms of Order XV-A of the Code of Civil Procedure, it was obligated to strictly follow the procedure prescribed therein. This follows the well-established principle that when the law prescribes a particular mode for performing an act, it must be carried out in that manner or not at all. He added that Order XV-A stipulates that if a summary judgment is sought on the basis of an application filed by either party, the respondent must be served with a 14-day notice of the hearing date along with a copy of the application. The respondent must also be afforded an opportunity to file a reply at least 7 days prior to the hearing. Likewise, if the summary judgment hearing is initiated by the court on its own motion, any party may file an affidavit in response after receiving such notice, at least 7 days before

¹⁰ PLD 2016 Supreme Court 730, 2009 PLD SC 367, 2004 SCMR 456, 2018 SCMR 1444, 2017 SCMR 1136

the hearing. The opposing party may, in turn, file a response to that affidavit no later than 3 days prior to the hearing. In the present case, the court was bound to observe this procedural framework. The failure to comply with these mandatory requirements has rendered the impugned order legally unsustainable.

12. The contentions of the learned counsel for the petitioner carry due weight. However, a careful examination of Rule 1 of Order XV-A reveals that the procedure for summary judgment may be initiated in three distinct ways.

Firstly, it may be commenced upon an application filed by either party, identifying the entire claim or defence, or specific parts thereof, on which summary judgment is sought. **Secondly**, the court may, on its own initiative, grant summary judgment if it is satisfied that the respondent has no real prospect of succeeding on the claim or of successfully defending it, and that there is no genuine dispute as to any material fact requiring a trial, such that one party is entitled to judgment as a matter of law. **Thirdly and finally**, the court may pass a summary judgment where both parties mutually agree to have all or part of the claim determined in such manner, and the court is satisfied that it is appropriate to do so.

13. The present case falls within the third category outlined in Rule 1 of Order XV-A, wherein both parties have agreed to have the matter determined through summary judgment. In such cases, the procedural requirements of seeking replies or issuing notices, as prescribed under

Rule 4 of Order XV-A, are not mandatory. These procedural safeguards are applicable only where the summary judgment is initiated either through an application by a party or by the court on its own motion. Clause (b) of Rule 1 of Order XV-A provides a consensual mechanism for summary judgment. The underlying assumption in such cases is that there is no need to follow the detailed procedural steps set out in Rule 4, as both parties have expressly consented to summary adjudication and thus impliedly agreed to bypass the routine procedure required under Rule 4. In other words, once consent has been given by both parties under Rule 1(b), the requirements relating to issuance of notice, submission of replies, and filing of affidavits under Rule 4 do not apply.

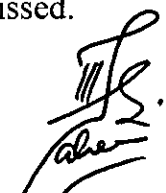
14. Even otherwise, it is difficult to comprehend that, when parties mutually agree to settle their dispute through a compromise, there could still be a requirement to serve notice. This is because the initiation of proceedings based on mutual consent effectively amounts to provisional notice. The combined effect of the foregoing clarification makes it evident that there is no procedural violation in deciding a lis through summary judgment or under Order XXIII Rule 3, provided that the intent to settle arises from the mutual consent of the parties and is assessed in light of the specific facts and circumstances of each case. Similarly, when the court proceed to decide the case, upon the mutual consent of the parties, by resorting to summary judgment, then, serving a notice upon the parties is not

the requirement of the law as envisaged in Order XV-A of the CPC. Furthermore, the insertion of Order XV-A of the Code of Civil Procedure was aimed at ensuring expeditious and inexpensive justice, in line with the objective of Article 37(d) of the Constitution of Pakistan. It serves as an effective mechanism to curtail unnecessary litigation by enabling the court to invoke the procedure of summary judgment wherever the facts and circumstances of the case so permit.

15. Last but not the least, a consent decree operates as an estoppel by judgment. This principle was comprehensively examined in *Sailendra Narayan v. State of Orissa*¹¹, wherein the Hon'ble Supreme Court held that a compromise decree constitutes an estoppel by judgment, and thus, it has the same binding effect between the parties as a judgment and decree passed by a competent court after full contest and application of judicial mind¹².

16. For the reasons stated above, no illegality or material irregularity has been committed by the Courts below, warranting interference by this Court in its revisional jurisdiction. Resultantly, this revision petition, being devoid of merits, stands dismissed.

Announced.
22.05.2025


JUDGE

SB **Hon'ble Mr. Justice Muhammad Faheem Wali**

Assisted by: **Riaz Aslam Daavi, Senior Research Officer.**

Abdur Rehman JSS

¹¹ AIR 1956 SC 346

¹² 2016 YLR 319