

HIGH COURT OF AZAD JAMMU AND KASHMIR

Civil Appeal No.96/2019.
Date of institution.19.09.2019.
Date of decision.27.08.2022.

Muhammad Waseem Khan S/o Khan Muhammad Khan
caste Maldiyal R/o Nar Sher Ali Khan Tehsil & District
Bagh.

Appellant.

VERSUS

1. Chairman Board of Intermediate & Secondary Education Mirpur.
2. Secretary Education Board.
3. Controller Examination Board Intermediate and Secondary Education Mirpur.
4. Public At large.

Respondents.

CIVIL APPEAL

Before:- Justice Muhammad Habib Zia, J.

PRESENT:

Raja Ejaz Ahmed, Advocate, for Appellant.

JUDGMENT:

The captioned appeal has been directed against the judgment and decree passed by the learned District Judge Bagh dated 03.09.2019, whereby, judgment and decrees passed by Senior Civil Judge Bagh dated 10.09.2018 and Senior Civil Judge Bagh dated 04.03.2019, were set-aside.

2. The summary of case is that appellant-plaintiff filed a suit for declaration and correction of date of birth according to ID Card in matriculation certificate as 06.12.1993 instead of 01.10.1996 before Senior Civil Judge Bagh on 24.07.2018. After filing of the suit, the respondents were summoned, who despite service failed

to appear, hence, ex-parte proceedings were ordered against them and consequently after recording evidence of the plaintiff-appellant, herein, and going through the record passed the judgment and decree in favour of the plaintiff on 10.09.2018. Against the aforesaid judgment and decree defendants-respondents, filed an application under section 12(2) of Civil Procedure Code, 1908 for cancellation of ex-parte decree in the same Court on 22.12.2018, taking pretend of unawareness of the ex-parte decree. The appellant, herein, filed objections on the application and took stance that respondents were fully aware of the ex-parte judgment and they deliberately filed a time barred application, after passing ex-parte decree. The learned Senior Civil Judge Bagh after hearing rejected the aforesaid application vide order dated 04.03.2019. Against the aforesaid order, respondents filed an appeal before District Judge Bagh on 01.07.2019, who after hearing the parties accepted the appeal vide order dated 03.09.2019, by recalling the orders of learned Senior Civil Judge Bagh dated 10.09.2018 and 04.03.2019 while rejecting the suit as well. Feeling aggrieved from the aforesaid order, the plaintiff-appellant has filed the instant appeal.

3. The respondents despite service failed to appear before the Court, therefore, proceeded ex-parte vide order dated 04.08.2022. Raja Ejaz Ahmed, the

learned counsel for appellant argued the case according to respective pleadings and submitted for acceptance of appeal.

4. I have perused the contents of appeal and examined the appended record made available with utmost care.

5. A contemplate perusal of file reveals that appellant, herein, filed a suit for declaration before Senior Civil Judge Bagh on 24.07.2018 for correction of his age in matriculation certificate as 01.10.1996, instead of 06.12.1993, which was decreed in his favour on 10.09.2018, through ex-parte proceedings. Against the aforesaid order, the respondent, herein, filed an application under section 12(2) Civil Procedure Code, 1908, after elapsing of 102 days, which is hopelessly time barred of about 12 days. The learned trial Court after obtaining objections from the other side, rejected the same through order dated 04.03.2019. Against the said order, the respondents filed an appeal before the learned District Judge Bagh on 01.07.2019, after about 118 days, which was also time barred of about 28 days. The Apex Court in a precedent case held that merit of the case could be considered after crossing barriers of limitation. The same proposition came under consideration before the Apex Court in case titled Khawaja Ghulam Qadir & another V. The Custodian of

Evacuee Property & 13 others [2002 SCR 183] wherein, it was observed as under:-

“Review could be filed within thirty days but it had been filed after 07 years. Delay of each day has to be explained. No specific plea was taken about the date of knowledge.”

As the appeal before the learned District Judge Bagh, was hopelessly time barred, hence, no need to discuss merits of the case. Therefore, I am of the considered view that the impugned judgment and decree 03.09.2019, passed by the learned District Judge Bagh is not maintainable in the eye of law.

6. The crux of above discussion is that by accepting the instant appeal, the impugned judgment and decree dated 03.09.2019, passed by the District Judge, Bagh is recalled. Consequently, judgment and decree dated 10.09.2018 alongwith order dated 04.03.2019, passed by the learned Senior Civil Judge Bagh are maintained.

Muzaffarabad
27.08.2022 (I)

-Sd-
JUDGE

Note: Judgment is written and duly signed. The office of headquarter is directed to transmit the file to Circuit Rawalakot. The office of Circuit Rawalakot is directed to apprise the learned counsel for parties accordingly.

-Sd-
JUDGE