

**JUDGMENT SHEET**  
**IN THE HIGH COURT OF BALOCHISTAN, QUETTA**

Constitutional Petition No. 1131 of 2021

(Kamal Ashraf and others v. Atique-Ur-Rehman & others)  
(CC No.100107403016)

**J U D G M E N T**

Date of hearing: 12<sup>th</sup> June, 2024      Announced on      July, 2024

Petitioners by: Mr. Naimatullah Achakzai, Advocate.

Respondents

No.1-A to 1-J

and 2 by: Mr. Manzoor Ahmed Shah, Advocate.

State by: Mr. Shai Haq Baloch, Additional Advocate General.

**IQBAL AHMED KASI, J.-** Through the instant petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (**‘the Constitution’**), carries the following prayer clause:

*“It is accordingly respectfully prayed that keeping in view the above made humble submissions the impugned orders dated: 09-10-2019 and 26-04-2021 may kindly be set-aside and consequently the application of the petitioners may kindly be allowed by considering the replication as invalid and the same may not be considered as valid pleadings of the petitioners and the same may not be considered in evidence or against the interest of the petitioners, as the same is filed without the consent and knowledge of the petitioners and against their interest in the interest of justice, equity and fair play.”*

2. Brief facts arising to file the instant petition are that the petitioners/plaintiffs on 30.08.2016 filed a civil suit for declaration and permanent injunction against the respondents/defendants No.1 to 4, which was registered as Civil Suit No.86 of 2016.

3. After registration of the suit, notices were issued to procure the attendance of private respondents/defendants. Respondents/defendants No.1-A to 1-J filed written statement and controverted the claim of petitioners/plaintiffs on factual as well as on legal grounds. The petitioners/plaintiffs filed an application for permission of filing the replication, the same was noticed to the respondents/defendants No.1-A to 1-J, who filed rejoinder to the same. After hearing arguments, the Senior Civil Judge-IV, Quetta (**“the trial Court”**) vide order dated 15.05.2018 allowed the application. In consequence, whereof, previous counsel for the petitioners/plaintiffs filed replication. Learned counsel for the respondents/defendant No.1-A to 1-J filed an application under Order XIII, Rule 1 & 2 CPC for placing on the record the same replication in another Civil Suit No.140/2017, pending adjudication before the trial Court/respondent No.5. The petitioners/plaintiffs came to know about the same replication, they immediately through their counsel challenged the same by filing an application under Order VI, Rule 14 CPC. Respondents/defendants No.1-A to 1-J filed rejoinder to the same. After hearing arguments from both parties, the trial Court rejected the application vide order dated 09.10.2019 (**“the impugned order”**). The petitioners/plaintiffs being aggrieved and dissatisfied from the impugned order, filed Civil Revision Petition No.09 of 2021 before the Additional District Judge-VII, Quetta (**“the revisional**

**Court”)** and thereafter filed an application under Order XIII, Rule 1 & 2 CPC for placing on the record plaint and written statement in Civil Suit No.45/2018. After hearing learned counsel for the parties, the revisional Court/respondent No.6 vide order dated 26.04.2021 (**“the impugned order”**) dismissed the revision petition, hence this petition.

4. Learned counsel for the petitioners/plaintiffs *inter alia* contended that both the Courts below absolutely failed to consider that the petitioners/plaintiffs neither advised nor asked their counsel to file replication, but the counsel without consent or advice and knowledge of the petitioners/plaintiffs filed the application for filing the replication; that both the lower Courts while passing the impugned orders failed to consider that the replication facts are stated against the interest of petitioners/plaintiffs; that both the Courts below while passing impugned orders failed to consider that the replication has been filed against the scope of Order VI, Rule 14 and 15 CPC; that admittedly, replication was neither signed by any of the petitioners/plaintiffs nor by the attorney; that some material facts, which are not in knowledge of the previous counsel for the petitioners/plaintiffs are mentioned in the replication, which is against the interest of petitioners/plaintiffs.

5. On the other hand, learned counsel for the respondents/defendants No.1-A to 1-J and 2 opposed the contention of learned counsel for the petitioners/plaintiffs on the ground that both the Courts below well-appreciated the relevant law and facts; that the petitioners/plaintiffs filed an application for submission of replication and the order was passed, thereafter, filed replication and they were

silent for considerable period, as such, there is no ground to interfere in the concurrent findings.

6. We have heard learned counsel for the parties and perused the available record with their able assistance. According to the record, petitioners/plaintiffs filed Civil Suit No.86 of 2016 for declaration and permanent injunction against the respondents/defendants No.1 to 4. The respondents/defendants contested the suit by filing their written statement(s) during the pendency of the suit. The petitioners/plaintiffs filed an application for permission to file replication, which was allowed by the trial Court on 15.08.2018. After the passing of the order, the previous counsel of petitioners/plaintiffs filed replication on 13.06.2018. it remained the version of petitioners/plaintiffs that previous counsel without their knowledge and consent filed replication and this fact came to their knowledge when the counsel for the respondents/defendants No.1-A to 1-J filed an application under Order XIII, Rule 1 & 2 CPC for placing on the record the same replication in Civil Suit No.140/2017 pending for adjudication before the trial Court. Perusal of the record further transpires that the replication was signed by previous counsel for the petitioners/plaintiffs, the said replication was neither signed by any of the petitioners/plaintiffs nor their attorney. The replication so filed could not be treated as valid replication because the same is contrary to the mandate of Order III, Rule 1 and Order VI, Rule 14 CPC. The replication was signed by the counsel and not by the petitioners/plaintiffs. Reliance is placed on the judgment titled as “Flight Lt. Anwarul Hasan Siddiqui v. Family Judge, Court No.III,

Karachi and 2 others” reported in PLD 1980 Karachi page 477 as under:-

*“The power of an Advocate, of course, does not mean or include the power to sign a plaint or written statement by him for and on behalf of his client.”*

This principle was further confirmed/laid down by this Court in a judgment titled “Secretary Communication & Works Department Government of Balochistan and others v. Dad Bakhsh and another” 2013 CLC 343.

7. It is a settled principle of the law that lawyers are not supposed to replace their client(s) for any substantial relief, which their clients want on the basis of fact from the Court. The distinction to be drawn between the client/litigant and his/her lawyer. Lawyer(s) cannot swear affidavit of facts relating to the stance of their client(s) in which they/he need for order from the Court of law, so felt by their/his client. The facts and circumstances can only be in the personal knowledge of their client(s) and therefore, when neither the client(s) of the petition is signed by the petitioner, it is difficult to believe that the petition has been filed under the instructions given by the petitioner. The lawyers cannot file suit and other miscellaneous petitions on the strength of power (وکالت نامہ).

Thus, what has been discussed hereinabove, we are of the considered view that learned counsel for the petitioners/plaintiffs succeeded in making out a case in favour of the petitioners/plaintiffs. Resultantly, the instant petition is allowed and the impugned orders dated 09.10.2019 and 26.04.2021, passed by the trial Court/respondent No.5 and the revisional Court/respondent No.6 are

set aside. The application filed by the petitioners/plaintiffs before the trial Court is allowed and the replication may not be considered as valid, evidence against the interest of the petitioners/plaintiffs.

***QUETTA***  
*Announced in open Court*  
Today on this \_\_\_\_\_ day of July, 2024

**JUDGE**

**JUDGE**

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