

Stereo.HCJDA-38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

W.P. No.48863 of 2023

Muhammad Akram

v.
Haji Ilam Din (deceased) through L.Rs and others

JUDGMENT

Date of Hearing	14.02.2024
Petitioners by	Mr. Umar Farooq, Advocate.
Respondents by	Ms. Sabahat Rizvi, Advocate.

RASAAL HASAN SYED, J. Petitioner in this constitutional petition has challenged order dated 15.7.2023 of the learned Addl. District Judge, Lahore whereby application to summon the Record Keeper of Treasury Office, District Lahore along with the record regarding stamp-paper at serial No. 409 dated 15.8.1998 issued by Muhammad Naeem, Stamp Vendor and for recording his statement as a court-witness, was allowed by setting aside the order dated 18.1.2023 of the learned Civil Judge, Lahore, while accepting the revision petition.

2. Facts as will be relevant for disposal of this petition are that suit for specific performance titled Haji Ilam Din v. Ghulam Haider, etc. and another suit for specific performance and permanent

injunction titled Muhammad Hanif v. Noor Muhammad were instituted and are pending in the civil court in respect of land measuring 19 kanals and 16 marlas situated in Mauza Arainyan, Raiwind Lahore. Vide order dated 31.10.2019 both the suits were consolidated and consolidated issues were framed with the direction to the parties to file within seven days the list of witnesses and certificate of readiness to produce evidence. It is claimed that both the parties did not file list of witnesses after the framing of consolidated issues. On 20.1.2020 petitioner and his witnesses appeared in court when objection was raised that list of witnesses was not filed and, therefore, their evidence could not be recorded. An application was moved by the petitioner claiming that list of witnesses having already been filed before the consolidation of suits may be treated as list of petitioner's witnesses or alternatively the petitioner may be allowed to furnish fresh list of witnesses on the basis of additional issues framed by the court. This application was declined vide order dated 01.2.2020. The order was challenged in revision which was also dismissed by the learned Addl.

District Judge vide order dated 29.4.2021. These two orders were challenged before this Court in writ petition No. 30927 of 2021 which too was dismissed on 01.7.2021. It is claimed that an application under Order XVI, C.P.C. was filed on 24.10.2022 by defendant Nos. 3 to 9 (respondents herein) for summoning Record Keeper of Treasury Office, District Lahore along with record of stamp-paper at serial No. 409 dated 15.8.1998 issued by Muhammad Naeem, Stamp Vendor which was opposed and declined by the learned Civil Judge vide order dated 18.1.2023. The respondents challenged the order in revision which was accepted by learned Addl. District Judge, Lahore vide impugned order dated 15.7.2023.

3. Learned counsel for the petitioner mainly argued that the list of witnesses having not been filed after the framing of additional issues by the petitioner, the permission to summon the Record Keeper of the Treasury, at this stage, could not be permitted in the absence of any good or sufficient cause which having not been shown, the order of the learned Civil Judge declining the application was justified and that interference in revision by the

learned Addl. District Judge vide impugned order was contrary to the rule consistently laid by the superior courts in terms whereof any party to the suit could not summon a witness not named in the list of witnesses which needs to be filed within seven days from the framing of issues; unless permission is solicited from the court in terms of proviso to Rule 1 of Order XVI, C.P.C. by showing “good cause” which course having not been adopted in this case, the order of the learned Addl. District Judge in revision was unsustainable. It is added that the respondents being negligent in filing of the list of witnesses in time could not be allowed to by-pass the law and that the petitioner was not allowed to file list of witnesses after the framing of additional issues which order was sustained up to this Court and, therefore, the respondents could not be treated differently than treatment extended to the petitioner and that the rule of propriety demanded that the respondents should not have been permitted to summon the Record Keeper in the absence of any list of witnesses or “sufficient cause” for the delay in this context. Learned counsel relied on certain caselaw to emphasize that the superior courts while

considering the effect of Rule 1 of Order XVI, C.P.C. have consistently observed that the rule is mandatory and that no party can be taken by surprise and that the parties to a suit are under obligation to file a list of witnesses whom they want to summon through the process of court and in case of failure to do so the court is competent to grant permission for filing delayed list provided "sufficient cause" is established.

4. Learned counsel for the respondents contrariwise submitted that the documents were duly relied upon in the list of reliance submitted in court under Order XIII, Rule 1, C.P.C. and Order VII, Rule 14, C.P.C. Referring to the certified copies of the list of reliance it was submitted that there was no element of surprise to the petitioner; rather the document was duly mentioned in the list of reliance. It was added that the petitioner Muhammad Akram himself appeared in the witness-box, recorded his oral statement and produced agreement to sell dated 15.8.1998 purportedly executed by Noor Muhammad son of Imam Din in favour of the petitioner which is Exh.D-1 in the suit titled Muhammad Hanif v. Noor Muhammad, etc.

During cross-examination by the counsel for legal heirs of late Haji Ilam Din certain questions in regard to the agreement were put to Muhammad Akram petitioner who denied the same although he admitted that the stamp of Exh.D-1 bore serial No. 409 but expressed lack of knowledge about the copy of the form No. 409. He also denied the report of the Treasury in respect of the stamp-paper of form No. 409. It was added that copy of the record of stamp-paper No. 409 dated 15.8.1998, purportedly agreement to sell in favour of Muhammad Akram son of Muhammad Shafi and report of Treasury of District Lahore dated 30.5.2019 showed that fraud was committed by the petitioner Muhammad Akram as the report was to the effect that the particulars of “register goshwara” for the year 1998 to 1999 when scrutinized revealed that stamp value of Rs. 10/- dated 15.8.1998 in favour of Ghulam Muhammad son of Shah Din resident of Lahore was entered. In view of the contradiction in the document provided by the petitioner, and its original entered in the stamp-paper goshwara, the respondent moved an application for summoning of the record of the Treasury Office, District Lahore in respect of entry

No. 409 dated 15.8.1998 issued by Muhammad Naeem, Stamp Vendor. Learned counsel submits that the contradictions in the two documents i.e. Exh.D-1 and the actual entries of endorsement in the record for sale of stamp will show that fraud was committed by the petitioner and that the stamp paper on which the agreement was prepared did not pertain to the petitioner and that the learned Civil Judge rejected the application without considering the objective of the application or noticing the material effect of the production of record on the fate of the case while the learned Addl. District Judge duly took into consideration the plea of the petitioner and rightly observed that the court had the jurisdiction to call for the record if it is required to do justice and to determine the facts properly so as to reach the truth.

5. Submissions made by learned counsel for the parties have been given due consideration. It appears that initially the suits were tried separately and evidence was recorded. After their consolidation list of witnesses in respect of additional consolidated issues was not filed. Petitioner appeared in the witness-box and produced

the agreement relied upon by him as Exh.D-1. Learned counsel for the respondent Nos. 3 to 7, the legal heirs of deceased Haji Ilam Din, put serious questions to the witness in respect of the stamp entry of Exh.D-1. In cross-examination he admitted that the stamp Exh.D-1 was prepared on stamp paper No. 409 but he showed his ignorance as to the form (copy of which was put to him) for supply of stamp Exh.D-1. On being asked about the report of the Treasury Department as regarded entries qua stamp No.409, the petitioner denied that the stamp No. 409 for issuance of stamp-paper was in the name of Ghulam Muhammad son of Shah Din. He also denied that the stamp was issued on 16.7.1998.

Learned Addl. District Judge reversed the order of learned Civil Judge with the observation that the court was fully cognizant and had jurisdiction to summon any person as court-witness to receive evidence and allow the parties to produce the same so that complete justice could be done in the case.

6. As regards the objection of Order XVI, Rule 1, C.P.C. to the effect that a party could not summon any person as a witness unless they are named in the list of witnesses which could be filed

within seven days, there is no cavil with the proposition. It is also true that proviso to Rule 1 of Order XVI, C.P.C. empowers the court to condone the default in filing the list of witnesses within seven days if “sufficient cause” or “good reason” is shown to exist. In this case perusal of the application for summoning of Record Keeper with record of Treasury shows that the application was not filed under any specific rule rather title of the application shows that it was filed under Order XVI read with section 151, C.P.C. and all other enabling provisions of law while at paragraph 5 of the application it was stated that the Record Keeper of Treasury Office, District Lahore along with the relevant record of stamp-paper serial No. 409 dated 15.8.1998 be summoned for recording statement as a court-witness. Same was the request in the prayer clause of the application. It is thus obvious that the production of the witness and the record was claimed as a court-witness which obviously meant that the provision of Rule 14 of Order XVI, C.P.C. was attracted which mandates that where the court at any time considers it necessary to examine any person other than a party to the suit and who is not

called as a witness by a party in the suit, the court may of its own motion cause such person to be summoned as a witness to give evidence or to produce any document in his possession, on a day to be appointed; and may examine such person as a witness or require him to produce such document. Rule 14-A of Order XVI, C.P.C. was inserted by the Lahore High Court Amendment which is to the effect that when a witness is summoned by the Court of its own motion under Rule 14 of Order XVI, C.P.C. their diet money, etc. will be paid by such party or parties as the Court may in its discretion, direct. It appears that the learned Civil Judge was simply persuaded by the fact that earlier an application was filed by the petitioner for permission to file a new list of witnesses after consolidation of suits which was declined vide order dated 01.2.2020, the order was affirmed in revision vide order dated 29.4.2021 by learned Addl. District Judge and also by this Court in W.P. No.30927 of 2021 titled Muhammad Akram v. Noor Muhammad and others and, therefore, the respondent in this case should also decline to summon a witness not mentioned in the list, little appreciating that the

court itself had jurisdiction to allow any person's statement or production of record even if the parties to the suit had not summoned such person or record and that the court can exercise its power to record the statement as a court-witness and, if need be, to allow production of evidence in rebuttal thereof. Learned Addl. District Judge did take note of this aspect of the matter which is reproduced for facility of reference:

"... it is necessary to refer that court is competent to summon the witness keeping in view the importance and relevance of that piece of evidence so that justice could be done in the real sense and no one could be knocked out mere on technical ground. Stamp paper No. 409 dated 15.8.1998 is part of record, there, revision petitioner as alleged that it is a fake document, he produced the report of Record Keeper and want to summon him as a Court Witness so that the real fact could be unearth. It is sufficient to mention here that evidence proposed by the plaintiff is necessary to reach upon a just decision of the case. In such scenario the learned trial court has not properly appreciated the record as well as the relevant law on the subject and has committed material illegality as well as irregularity while passing the impugned order, therefore, the instant revision petition is accepted and the impugned order is set aside and accordingly the application for summoning of record keeper filed by revision petitioner stands accepted...."

7. Perusal of the stance of the respondent as to the document produced by the petitioner being fake; to cross-examine the petitioner in respect of Exh. D-1; and the evasive reply received would make it obvious that the material fact as to whether the document was genuine or not in view of the report, if allowed to come on record, will be necessary to reach the truth for doing justice to the parties. It is for this reason that Rule 14 of Order XVI, C.P.C. empowers the Court to summon any witness for recording his statement or produce any document if need be for the just and fair decision of the case even if the parties to the suit had failed to produce them in the court. It appears that the respondents being cognizant of the law, did not move the application under Rule 1 of Order XVI, C.P.C; rather the title of the application shows that it is under Order XVI read with section 151 C.P.C. and all other enabling provisions of law. Even otherwise if had no particular provision of law been quoted, the court will be fully empowered to determine as to which provision of law will attracted for the relief claimed in the application and mere fact that the prayer in the application was to

summon the witness for their statement and to produce record of Treasury as a court-witness was adequate to show that Rule 14 of Order XVI, C.P.C. will be attracted. In Zar Wali Shah v. Yousaf Ali Shah and 9 others (1992 SCMR 1778) it was observed to the effect that the courts have ample power to collect evidence and allow the party to produce the same so that complete and ultimate justice is done in the case and that concept of filling any lacuna cannot be recognized and applied in the Islamic system of jurisprudence which is being progressively applied to the Courts and Tribunals that are vested with the powers to receive evidence.

In Mst. Sardar Begum v. Zulfiqar Ali (2016 CLC Note 127) it was observed to the effect that the main object of Rules 1(2) and 14 of Order XVI, C.P.C. was that the entire evidence which was relevant and necessary for ascertaining truth and deciding the issues involved completely and effectively should come before the court at the stage of trial while passing judgment and that merely on the pretext of non-submission of list of witnesses and non-mentioning of names of witnesses in the list of witnesses, the matter could not be thrown out

of arena of litigation because same could be due to inexperience or lack of understanding on part of the counsel which omission amounted to “good cause”. Reference was made therein to the case of Agha Zahid Ali Hilali v. Muhammad Riaz and others (C.P. No. 1278 of 2013 decided on 23.9.2013)

where it was observed as under:

“It is not disputed on the record that examination of scribe and stamp vendor in the litigation on going between the parties is imperative for the just decision of the case. Yes, the respondents did not mention the names of these witnesses in their list of witnesses but when during the course of cross examination, it was suggested to respondent No.1 by the counsel for the petitioners that he failed to prove the document by not examining the scribe and the stamp vendor, he after having been set on his guards, proceeded to move an application for summoning of the aforesaid witnesses. This shows that omission to summon the witnesses owes its origin to either in-experience or lack of understanding on the part of the counsel or the party. Omission of this type was a good cause to all intents and purpose”

In the instant case the controversy was about the genuineness of the document produced as Ex.D-1 which according to respondents was prepared on a stamp-paper issued for a different person. The decision on the question would of course be relevant and helpful in determining the issue between the parties. It was in these circumstances that the learned Addl. District Judge allowed the revision

petition to find out a truth for doing complete justice between the parties.

8. As regards the argument that the petitioner's application under Rule 1, Order XVI, C.P.C. was dismissed and on that such premise the application of respondents should also have been declined; there is no substance in this argument for the reason that in the petitioners' case he was unable to show any "sufficient cause" for permission to file a List of Witnesses which was not filed earlier within seven days of the issues and no "sufficient cause" was shown to the satisfaction of the court. To the contrary in the instant case the respondents sought indulgence of the court for summoning the witness as a court-witness to find out truth and to do complete justice between the parties and the revisional court after considering this aspect, deemed it just and fair to allow the production of record; which was an official record of the Treasury. The reasons that sustained with the learned Addl. District Judge being just and fair no except could be taken thereto. As to the objection of extending equal treatment, of course, the witness being summoned as a court-witness to resolve the material

controversy and to dig out the truth, both the parties will be allowed to cross-examine such witness and, if need be, to allow the petitioners an opportunity of evidence in rebuttal. The petitioners shall, therefore, be fully protected. In view of the reasons supra the order of Addl. District Judge does not suffer from any error of law and jurisdiction and being based on rule of fair, just and complete justice, does not call for any interference.

9. Resultantly, the instant constitutional petition being devoid of any substance is **dismissed**.

**(RASAAL HASAN SYED)
JUDGE**

Announced in open Court on **01.3.2024**.

JUDGE

Approved for reporting.

JUDGE