Stereo HCJ DA 38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Civil Revision No.449-D of 2017

M/s AG Signs (Pvt.) Ltd. **V/S** *Gashoo Advertiser*

J U D G M E N T

Date of hearing	**08.05.2024**
Petitioner(s) by	Barrister Talha Ilyas Sheikh, Advocate.
Respondent(s) by	Ms. Elysee Nazir, Advocate.

JAWAD HASSAN, J. M/s AG Signs (Pvt.) Ltd. (the ***"Petitioner"***) has filed this Civil Revision under Section 115 of the Code of Civil Procedure (V of 1908) (the ***"CPC"***) challenging judgment and decree dated 11.03.2017 whereby learned Additional District Judge, Rawalpindi, while dismissing its appeal upheld the judgment and decree dated 23.01.2013 passed by learned Civil Judge Rawalpindi. Besides, the *"Petitioner"* has also challenged order dated 15.01.2013, whereby his right to produce evidence was closed.

I. BRIEF

2. The background of the present controversy is that Gashoo Advertiser (the ***"Respondent"***) filed a suit for recovery of Rs.1,06,45,000/- on 17.07.2008 against the *"Petitioner"* who stormily contested it by filing a written statement on 06.04.2009 before the trial Court. The issues were framed by the trial Court vide order dated 08.02.2010 and the case was fixed for the evidence of *"Respondent"* which was completed on 05.11.2012 and later the case was adjourned for evidence of the *"Petitioner"*. However, despite availing numerous opportunities to produce evidence, the *"Petitioner"* remained failed and the trial Court vide its order dated 15.01.2013 closed the Petitioner's right to produce evidence and fixed the case for final arguments on 17.01.2023. Ultimately the suit was decreed partially

vide judgment and decree dated 23.01.2013. Being dissatisfied, the *"Petitioner"* filed appeal before the Additional District Judge, Rawalpindi which was dismissed vide judgment and decree dated 17.03.2017. Hence this petition.

II. SUBMISSIONS OF THE PETITIONER

3. Barrister Talha Ilyas Sheikh, counsel for the *"Petitioner"* has *inter alia* argued that before closing the right of evidence, the trial Court was required to provide ample opportunities as afforded to the *"Respondent"*; that judgments and decrees of both the Courts below are the result of gross mis-reading and non-reading of evidence; that by closing the evidence of the *"Petitioner"*, the Courts below have denied the substantial rights to the *"Petitioner"* on the basis of technicalities. He has relied on *"HASHAM KHAN and others versus HAROON UR RASHID and others"* **(2022 SCMR 1793)**, *"Sheikh KHURSHID MEHBOOB ALAM versus Mirza HASHIM BAIG and another"* **(2012 SCMR 361)**, *"HAMIDULLAH KHAN and another versus Ch. MUHAMMAD JAMEEL and others"* **(2003 SCMR 995)**, *"MUHAMMAD YAQOOB and others versus RAHEELA YOUSAFL and others"* **(2024 CLC 49)**, *"SOHAIL NIAZ GILL versus SENIOR CIVIL JUDGE, ISLAMABAD and others"* **(2023 MLD 708)** and *"Messrs IJAZ NIZAM versus NIB BANK and others"* **(2017 CLD 361)**.

III. SUBMISSIONS OF THE RESPONDENT

4. Conversely, Ms. Elysee Nazir, Advocate counsel for the *"Respondent"* supported the impugned judgments and decrees and, while resisting the instant petition, submitted that there are concurrent findings of facts recorded by both the Courts below which are based on proper appraisal of evidence and unless some material illegality or irregularity is pointed out, the same cannot be interfered with in revisional jurisdiction. She argued that the *"Petitioner"* was found responsible for prolonging the matter on various pretexts. She has relied on *"MUHAMMAD SARWAR and others versus HASHMAL KHAN and others"* **(PLD 2022 Supreme Court 13)**, *"Mst. ZARSHEDA versus NOBAT KHAN"* **(PLD 2022 Supreme Court 21)**,

"SHAHBAZ GUL and others versus MUHAMMAD YOUNAS KHAN and others" **(2020 SCMR 867)** and *"CANTONMENT BOARD through Executive Officer, Cantt. Board, Rawalpindi versus IKHLAQ AHMED and others"* **(2014 SCMR 161).**

5. I have heard learned counsel for both the sides at considerable length and also perused the record with their assistance.

IV. DETERMINATION

6. The record indicates that initially, the evidence of the *"Respondent"* was completed on 05.11.2012, and the case was adjourned to 13.11.2012 for the evidence of the *"Petitioner"*. To gain a proper understanding of the controversy, the proceedings on subsequent dates of hearing are summarized in the tabular form below:

Sr.#	**Date of Hearing**	**Evidence produced/recorded by the "Petitioner" (Yes/No)**	**Order/Observation by Trial Court**
1	13.11.2012	No	Evidence not recorded. Petitioner sought adjournment.
2	19.11.2012	-do-	Adjourned due to strike of lawyers.
3	21.11.2012	-do-	Evidence not recorded. As per request of the "Petitioner", **last opportunity** was granted.
4	27.11.2012	-do-	Evidence not recorded. As per request of the "Petitioner", **last opportunity** was granted.
5	10.12.2012	-do-	Evidence not recorded. As per request of the "Petitioner", **last opportunity** was granted.
6	13.12.2012	-do-	Adjourned due to strike of lawyers.
7	18.12.2012	-do-	Evidence not recorded. As per request of the "Petitioner", **absolute last opportunity** was granted.
8	20.12.2012	-do-	Evidence not recorded. The case was adjourned with **absolute last opportunity**.
9	03.01.2013	-do-	Witnesses not present. As per request of the "Petitioner", **absolute last opportunity** was granted.
10	08.01.2013	-do-	Case was presented before Duty Judge due to transfer of Court. The parties appeared before the Duty Judge. As per request of the "Petitioner", **absolute last opportunity** was granted with **clear cut warning**, if evidence was

			not produced, its right would be closed
11	15.01.2013	-do-	Despite clear cut waring, evidence was not produced. The "Petitioner" right was closed under Order XVI Rule 3 of CPC.

7. It is apparent from the above tabled detail of proceedings of the trial Court that the *"Petitioner"* was afforded eleven adjournments spreading over more than two months for the production and recording of its evidence. Even, despite clear warnings i.e. "last opportunity", "absolute last opportunity" for more than once and even warning as to application of penal provision under Order XVII Rule 3 of the *"CPC"* by the trial Court, the *"Petitioner"* failed to produce any evidence which shows its adamant attitude towards the orders of the trial Court. Resultantly, the trial Court was left with no option but to pass following order:

> *"15.01.2013 Present: Counsel for the parties. Evidence of defendant is not available. Many opportunities have already been given to defendant for production of evidence but defendant has neither presented any evidence nor disclosed any reason for non-production of same, rather, defendant has not made any request for further adjournment. Consequently, defendant's right to produce evidence is closed. Now to come up for final arguments on 17.01.2013."*

8. Under Rule 1(1) of Order XVII of the *"CPC"*, the trial Court is vested with powers to adjourn the case on showing sufficient cause by either of the party and from time to time adjourn the hearing of the suit and Rule 1(2) of the said Order empowers the Court seized of the matter to fix a day for further hearing of the suit subject to costs occasion by the adjournment. Order XVII, Rule 3 of the *"CPC"* empowers the Court to proceed to decide the suit forthwith if a party, to whom time has been granted, fails to produce evidence, secure the attendance of witnesses, or perform any other act necessary for the further progress of the suit. For convenience, the said Rule 3 is reproduced hereunder for ease of reference:

> ***"3. Court may proceed notwithstanding either party fails to produce evidence, etc****: Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding each default, proceed to decide the suit forthwith."*

9. The above provision of law was thoroughly considered and deliberated upon by the Supreme Court of Pakistan in *"MOON ENTERPRISER CNG STATION, Rawalpindi, versus SUI NORTHERN GAS PIPELINES LIMITED through General Manager, Rawalpindi, and another"* **(2020 SCMR 300)** holding two conditions to be satisfied before applying above penal provision of law to close the right of a party to produce evidence, which reads as:

> *i. that time must have been granted at the request of a party to the suit to adduce evidence with a specific warning that said opportunity will be the last and failure to adduce evidence would lead to closure of the right to produce evidence; and*
>
> *ii. that the same party on the date which was fixed as the last opportunity fails to produce its evidence.*

10. In the present case, the learned trial Court used the discretion in favour of the *"Petitioner"* many a time by granting it adjournments for production of complete evidence (as tabulated above) but it failed to catch up the said leniency shown by the learned trial Court and even authorized representative of the *"Petitioner"* did not enter into the witness box so as to record his statement. The above picture of affairs makes it crystal clear that how the *"Petitioner"* pursued its case and also shows his disobedience and indifferent demeanour towards the orders of the Court; thus, such like indolent person cannot seek favour of law, because law favours the vigilant and not the indolent. In this regard reliance is placed on judgment reported as *"RANA TANVEER KHAN versus NASEER-UD-DIN and others"* **(2015 SCMR 1401)**, wherein it has been unequivocally held:-

> *'…… it is clear from the record that the petitioner had availed four opportunities to produce his evidence and in two of such dates (the last in the chain) he was cautioned that such opportunities granted to him at his request shall be that last one, but still on the day when his evidence was closed in terms of Order XVII, Rule 3, C.P.C. no reasonable ground was propounded for the purposes of failure to adduce the evidence and justification for further opportunity, therefore, notwithstanding that these opportunities granted to the petitioner were squarely fell within the mischief of the provisions ibid and his evidence was rightly closed by the trial court. As far as the argument that at least his statement should have been recorded, suffice it to say that the eventuality in which it should be done has been elaborated in the latest verdict of this Court (2014 SCMR 637). From the record it does not transpire if the petitioner was present on the day when his evidence was closed and/or he asked the court to be examined; this has never been the case of the petitioner throughout the proceedings of his case at any stage; as there is no ground set out in the first memo of appeal or in the revision petition.*

It was further held that:-

> *'2. … Be that as it may, once the case is fixed by the Court for recording the evidence of the party, it is the direction of the court to do the needful, and the party has the obligation to adduce evidence without there being any fresh direction by the court, however, where the party makes a request for adjourning the matter to a further date(s) for the purpose of adducing evidence and if it fails to do so, for such date(s), the provisions of Order XVII, Rule 3, C.P.C. can attract, especially in the circumstances <u>when adequate opportunities on the request of the party has been availed and caution is also issued on one of such a date(s), as being the last opportunity(ies)</u>.'*

<u>Emphases supplied</u>

11. The above said view was further affirmed by the Supreme Court of Pakistan in *"MOON ENTERPRISER CNG STATION, supra* by holding that *"the order to close the right to produce evidence must automatically follow failure to produce evidence despite last opportunity coupled with a warning. The trend of granting (Akhri Mouqa) then (Qatai Akhri Mouqa) and then (Qatai Qatai Akhri Mouqa) make a mockery of the provisions of law and those responsible to interpret and implement it. Such practices must be discontinued, forthwith."* In latest pronouncement on the identical issue, the Supreme Court of Pakistan in *"IMRAN AHMAD KHAN NIAZI versus Main MUHAMMAD SHAHBAZ SHARIF"* **(2023 SCMR 636)** has held that **"***leniency shown on part of judges of Trial Court in the matter of accommodating unjustified requests for adjournment, even at the cost of disregarding the timelines provided in the relevant laws, is unwarranted….Orders granting repetitive adjournments with warnings of "last and final" and "absolute last and final" opportunity become meaningless and shatter the confidence of the litigant public in the court orders and consequentially weaken the authority and fiat of the court"*

12. In view of law laid down in aforesaid judgments, the trial Court was quite justified in closing the right of the "Petitioner" through impugned order dated 15.01.2013 which, even otherwise, has not been challenged before any forum, thus attained finality. Without first getting obstacle of aforementioned order dated 15.01.2013, the "*Petitioner*" walked before lower Appellate Court mere to agitate against the judgment and decree in question passed by the trial Court and no justifiable reason backed by law is available in scenario at this belated stage to dislodge aforementioned order dated 15.01.2013.

13. Returning to the merits of case in hand, it evinces from the impugned judgments and decrees that Exh.P2 is an admitted document, contents whereof have not been denied by the *"Petitioner"*, as is evident from para 2 and 3 of this petition. Important to mention here that Exh.P-2 is the agreement that was executed between the parties on 15.08.2006 according to which the

"Petitioner" had to handover 43 electric sign poles on the agreed sites however, the *"Petitioner"* remained unable to perform its undertaken commitments whereas on the other hand, Muhammad Umer Farook, Clerk Cantonment Board appeared in the witness box as PW-1 while Muhammad Iqbal Butt appeared as PW-2, both were cross examined by the *"Petitioner"*. Moreover, the "Petitioner" has neither denied the receiving of Rs.645,000/- from the "Respondent" nor receiving of three cheques given to the "Petitioner" by the "Respondent" on account of installment. The parties cannot be allowed to blow hot and cold in single breath nor can they be allowed to assume divergent stances in their acts and conduct in connection with litigations in court of competent jurisdiction. Above indicated admission of Exh.P-2 on part of the "*Petitioner*" otherwise leaves behind no room for its challenge to the judgment and decree in issue.

14. Furthermore, there are concurrent findings of facts recorded by both the courts below which are based on proper appraisal of evidence. No jurisdictional defect or material irregularity is pointed out by the *"Petitioner"* in either of the judgments and decrees under challenge. The revisional powers are limited and can only be exercised when the *"Petitioner"* succeeds in establishing that the impugned judgments suffers legal infirmities hedged in Section 115 of the *"CPC"*. As already observed that the *"Petitioner"* has failed to point out any illegality, material irregularity, mis-reading or non-reading in the judgments and decrees as well as order of both the Courts below, so the revisional jurisdiction is not meant to re-appraise the evidence in order to devise an inference other than the Courts below. It is observed by the Supreme Court of Pakistan in case reported as "*Mst. Farzana Zia and others Vs. Mst. Saadia Andaleeb and others*" (**2024 SCMR 916**) that *"the High Court has the powers to reevaluate the concurrent findings of fact arrived at by the lower courts in appropriate cases but cannot upset such*

crystalized findings if the same are based on relevant evidence or without any misreading or non-reading of evidence. The first appellate court also expansively re-evaluated and re-examined the entire evidence on record. If the facts have been justly tried by two courts and the same conclusion has been reached by both the courts concurrently then it would not be judicious to revisit it for drawing some other conclusion or interpretation of evidence in a second appeal under Section 100 or under revisional jurisdiction under Section 115, C.P.C., because any such attempt would also be against the doctrine of finality." Even earlier, it is held by the Supreme Court of Pakistan in case cited as "*Nasir Ali Vs. Muhammad Asghar*" (**2022 SCMR 1054**) that *"the High Court has very limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising power under section 115, C.P.C. ... After scanning and browsing the evidence comprehensible on record, we reached to an irresistible conclusion that the interference made by the High Court in exercise of powers conferred under section 115, C.P.C. in the concurrent findings recorded by the Trial Court and Appellate Court was unjustified and unwarranted. Neither the Courts below have ignored material evidence or acted without evidence or drawn wrong inferences or conclusions from proved facts by applying the law erroneously, nor do the findings recorded amount to a dearth of evidence or suffering from any jurisdictional error or perversity."* Further it is settled by the Supreme Court of Pakistan in case reported as "*Khudadad Vs. Syed Ghazanfar Ali Shah alias S. Inaam Hussain and others*" (**2022 SCMR 933**) that *"The High Court has a narrow and limited jurisdiction to interfere in the concurrent rulings arrived at by the courts below while exercising power under section 115, C.P.C. These powers have been entrusted and consigned to the High Court in order to secure effective exercise of its*

superintendence and visitorial powers of correction unhindered by technicalities which cannot be invoked against conclusion of law or fact which do not in any way affect the jurisdiction of the court but confined to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or the conclusion drawn therein is perverse or contrary to the law, but interference for the mere fact that the appraisal of evidence may suggest another view of the matter is not possible in revisional jurisdiction, therefore, the scope of the appellate and revisional jurisdiction must not be mixed up or bewildered. The interference in the revisional jurisdiction can be made only in the cases in which the order passed or a judgment rendered by a subordinate Court is found to be perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and the conclusion drawn is contrary to law." More or so the same principles have been elaborated, highlighted and settled by Supreme Court of Pakistan in cases reported as "*Shahbaz Gul and others Vs. Muhammad Younas Khan and others*" (**2020 SCMR 867**), "*Noor Muhammad and others Vs. Mst. Azmat-e-Bibi*" (**2012 SCMR 1373**), "*Hazara and others Vs. Muhammad Yar and others*" (**2011 SCMR 758**), as that if evidence available on record is thoroughly examined by trial Court as well as First Appellate Court, the learned High Court, in exercise of its revisional jurisdiction, was not called upon to re-appraise and re-evaluate the merits of evidence of the parties in the absence of any illegality or non-reading/ misreading of evidence. Moreover, the judgments referred to by learned counsel for the Petitioners cannot be relied upon being distinguishable from the facts and circumstances of the case as each and every case has its own merits.

15. In view of above, this civil revision, being without any merit, is ***dismissed*** with no order as to costs.

(JAWAD HASSAN)
JUDGE

Approved for Reporting

JUDGE

*Usman**