

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No. 50670 of 2020

Muhammad Azam

Versus

Muhammad Anwar Khan and 6 others

JUDGMENT

Date of hearing:	03.04.2023
Petitioner(s) by:	Mr. Aamir Majeed Rana and Sana Iqbal, Advocates
Respondent (s) by:	Mian Khalid Habib Elahi, Advocate.

SULTAN TANVIR AHMAD, J.:- Present civil revision, filed under section 115 of the Code of the Civil Procedure 1908 (the '**Code**'), is directed against order dated 25.09.2020 passed by learned Civil Judge 1st Class, Lahore.

2. Brief facts of the case are that the respondents filed a suit for declaration, cancellation of sale deeds, possession and recovery of *mesne* profits along with permanent injunction with respect to property as detailed in the suit, which is being contested by the petitioner. Out of divergent pleadings of the parties, the learned Civil Judge, Lahore framed issues on 19.03.2019 and directed the parties to submit their lists of witnesses within seven (07) days. In consequence of an application filed by the respondents, the learned trial Court reframed certain issues on 25.07.2019. After settlement of the issues, the process of recording evidence was initiated. The respondents completed their evidence, oral as well as documentary, on

27.08.2020 and the learned Court fixed the case the evidence of the revision-petitioner. On 01.09.2020, the revision-petitioner filed an application (hereinafter called as the '*application*'), with the following prayer:-

“It is, therefore, respectfully prayed that the application in hand may kindly be accepted and the applicant / defendant No.1 may please be allowed to file list of witnesses.”

The *application* was contested by the respondents by filing written reply. On 25.09.2020 the learned trial Court dismissed the *application*. Aggrieved from the same, the present revision petition has been filed.

3. Mr. Aamir Majeed Rana and Ms. Sana Iqbal, learned counsel for the revision-petitioner, have submitted that the *application* for submitting the list of witnesses has been turned down by the learned trial Court without appreciating the facts of the case; that the list of witnesses was submitted by the revision-petitioner within the stipulated time period, however, the *ahalmad* of the Court due to rush of work misplaced the original list, therefore, the revision-petitioner should not suffer from the fault of the Court. The learned counsel has further contended that the order dated 25.09.2020 passed by the learned trial Court is illegal and against the facts. No other ground is pressed before this Court by the learned counsel for the revision-petitioner.

4. Conversely, Mian Khalid Habib Elahi, learned counsel for the respondents, has vehemently opposed this revision-petition. The learned counsel has submitted that entire evidence of respondent side has already been recorded and the *application* for placing list of witnesses on the record is not merely filed at the belated stage but at the same time, if such request is allowed, at this stage, it

shall cause severe prejudice to the interest of the respondent. It is added by the learned counsel that the revision-petitioner neglected his duty to follow the law as well as order of the learned trial Court and now he is falsely attributing the same to the Court's staff.

5. I have heard the arguments and perused the documents available on the file with the able assistance of the learned counsel of the parties.

6. Order XVI Rule 1 of the *Code* requires the parties to provide list of witnesses within seven (07) days of settlement of issues. If omission in this regard has taken place, it is imperative to obtain permission of the Court. The concerned Court is required to see availability of 'good cause' for excuse from such omission, keeping in view fact of each case and the attending circumstances. If the Court is satisfied as to availability of *good cause* then the permission can be granted for which reasons are required to be recorded.

7. In order to explain delay of more than one year and to satisfy the Court as to the availability of 'good cause' for not providing the list of witnesses within stipulated time, the revision-petitioner has adopted a specific stance that the original list of witnesses was filed, as directed by the Court, but it was misplaced by the *ahalmad* of the learned Court. These grounds are taken in paragraphs No. 2 and 3 of the *application*, which reads as follows:-

"2. That this Honourable Court after framing issues directed the parties to submit their list of witnesses, however, in compliance of order of this Honourable Court the counsel of the applicant / defendant No.1 submitted list of witnesses

but the Ahalmad of this Honourable Court due to rush of work misplaced the list and that's why he not annexed the same with the case file and on the other hand the applicant / defendant No.1 and his counsel are under impression that Ahalmad must be placed list of witness on file.

3. That now some days ago upon examination of the court file it has come to the knowledge of the counsel of the defendant No.1 that the list of witnesses was not placed due to omission by Ahalmad."

8. As per the above-reproduced grounds, the learned counsel of the revision-petitioner allegedly filed a list but it was misplaced by *ahalmad* of the learned Court. Thereafter, it has been asserted in the *application* that this fact came in the knowledge of the learned counsel of the revision-petitioner on examination of the Court file. There is no fact given in the *application* that the revision-petitioner has ever seen or observed or for that matter something that is in his direct knowledge. It is also not stated in the *application* that revision-petitioner has ever seen or signed the list that was allegedly filed and then misplaced due to mistake of *ahalmad* of the Court, but somehow to support above reproduced grounds, an affidavit of the revision-petitioner is attached with the *application*. No affidavit of the learned Advocate has been provided in order to support the contentions in the *application*. Even no affidavit of anyone from the office of the learned Advocate or his clerk is available on the record. To make out a *prima facie* case that an official of the Court neglected his duty or misplaced a document, an affidavit of a person who could not even depose as to those facts, is certainly based on hearsay and the same is not sufficient to justify the *cause* disclosed in the *application*. A learned Division Bench of this Court in

case titled “Syed Zulfiqar Ali Shah v. Habib Bank Limited through Attorney and 7 others” (2006 CLD 139) vis-à-vis an affidavit of a litigant having no possibility of having knowledge of the facts stated therein, has observed as follows:-

*“...It has vaguely and casually been stated, as reproduced above, that the learned counsel was busy before this Court and in the august Supreme Court of Pakistan. The applicant has not specifically pleaded and failed to narrate as to before which Courts, the learned counsel was busy and at what point of time. **The learned counsel of the applicant even did not furnish his affidavit and felt contended only by filing the affidavit of the applicant in routine. The affidavit of the applicant is of no avail to him, as he could not depose about the alleged engagements of his learned counsel before "other Benches of this Court and before the august Supreme Court" specially in view of the narrative in para.2 of the application,** which states that the petitioner/appellant could not be informed by the counsel being belonging to outside Lahore and for this reason the case remained unattended even by the petitioner. If said para. of the application be taken as true, then applicant's affidavit appears to be false, as he could not depose about the alleged pre-occupation of the learned counsel before any of the Courts as he was not in the knowledge of fixation of the appeal...”*

(Emphasis supplied)

9. It is an admitted fact that no photocopy of the list of witnesses that was allegedly filed and then misplaced by the *ahalmad* of the learned trial Court, was ever provided to the said Court and instead a fresh list was prepared and furnished before the learned trial Court. This fresh list is available at page No. 22 of the file of this Court, which does not even contain any date. In paragraph

No. 2 of the *application* it is stated that the learned counsel learnt about the alleged incident of misplacing the document upon perusal of record of the learned trial Court but no date of gaining such knowledge or inspection of the file is mentioned in the *application* or the present civil revision. Today, the learned counsel for the revision-petitioner was permitted an opportunity to show photocopy of the list of witnesses that was prepared on the direction of the learned trial Court, however, the learned counsel conceded that no photocopy of that list is even available in his record / file.

10. It seems that after conclusion of evidence of respondent / plaintiff and one year after the given time, a list of witnesses is sought to be produced on a plea, which on the face of it appears to be false and which remained unsupported by anything on record or any affidavit of the relevant person. There is no cavil to the proposition, after the law settled in cases titled “Amjad Khan v. Muhammad Irshad (Deceased) through LRs” (2020 SCMR 2155) and “Muhammad Anwar and others v. Mst. Ilyas Begum and others” (PLD 2013 SC 255), that a party seeking such permission has to show ‘good cause’ on the basis of which the omission can be excused, which the Court has to see while keeping in view the facts and circumstances of each case. The parties cannot be granted such permissions, at belated stage, as a matter of right or as a matter of course, without assigning or establishing ‘good cause’. Admittedly, the litigants cannot be made to suffer due to fault of Court or its staff but such attribution cannot be accepted on the basis of unfounded and groundless or unjustifiable statements and which even otherwise remain unsupported by affidavit of the relevant person. A similar plea, of misplacing list of witnesses by Court-staff, when

remained unconfirmed by anything from record, has already been rejected by this Court in case titled “Muhammad Iqbal v. District Judge, Vehari and others” (2020 MLD 1760).

11. The contention as to misplacing the list of witnesses by *ahalmad* of the Court has no legs to stand on, therefore, I agree with the argument of Mian Khalid Habib Elahi learned counsel for the respondents that instead of showing ‘*good cause*’ for the omission, a fake and false plea has been taken by the revision-petitioner. The revision-petitioner has miserably failed to support his stance in the *application* or to show availability of ‘*good cause*’ from the record and circumstances of the case.

12. For what has been discussed above, this civil revision having no merits is ***dismissed***. No order as to costs.

(SULTAN TANVIR AHMAD)
JUDGE

Approved for reporting.

JUDGE