

Judgment Sheet

IN THE LAHORE HIGH COURT,
MULTAN BENCH MULTAN.
JUDICIAL DEPARTMENT

C.R. No.1527-D of 2018

Zafar Iqbal
Vs.
Muhammad Amjad Shami.

J U D G M E N T

Date of hearing	18.04.2024
Petitioner By:	Mr. Muhammad Masood Bilal, Advocate.
Respondent By:	Sahibzada Mahmood Ali Khan, Advocate

Faisal Zaman Khan, J:- This civil revision is directed against the judgments and decrees dated 04.04.2018 passed by the learned civil judge Chichawatni and 08.09.2018 by the learned Additional District Judge, Chichawatni. By virtue of the formal judgment a suit for possession through pre-emption filed by the petitioner against the respondent has been dismissed and through the latter the same has been upheld.

2. Succinctly, the facts of the case are that a suit for possession through pre-emption was instituted by the petitioner against the respondent claiming to have a superior right of pre-emption, wherein written statement was filed by the respondent denying the claim of the petitioner, whereupon, out of the divergent pleadings of the parties as many as 08 issues were framed; evidence *pro* and *contra* was led, whereafter, through judgment and decree dated 04.04.2018 the suit was dismissed. Feeling aggrieved, respondent preferred an appeal, which was also dismissed vide judgment and decree dated 08.09.2018, hence, this civil revision.

3. At the outset of hearing, learned counsel for the petitioner has been confronted with the following propositions that:

- a. it has been alleged by the petitioner that he made the *Talb-e-Muwathibat* at the office of the Advocate, however, in his plaint neither he has mentioned the name of the said Advocate nor his categoric address, hence, he has failed to prove the said Talb;
- b. since the names of the witnesses of *Talb-e-Ishhad* have not been mentioned in the plaint, therefore, this infirmity is fatal for the suit;
- c. since the petitioner has failed to produce the acknowledgement due card, therefore, he has failed to prove that *Talb-e-Ishhad* was made; and
- d. that since the service of notices of *Talb-e-Ishhad* was denied by the respondent, therefore, in order to prove the same and keeping in view Section 13 of the Punjab Pre-Emption Act (No.IX of 1991) (**Act**) it was imperative for the petitioner to have produced the concerned postman and although this requirement of law was fulfilled by the petitioner by way of producing the postman as PW.6, yet in his deposition the said witness has stated that instead of serving the respondent personally notice was served upon one Muhammad Arshad Khan without establishing that whether service could be effected on Muhammad Arshad Khan, who was not even the attorney of the respondent, especially so when admittedly respondent was out of country, therefore, the said service is not valid.

4. In spite of his earnest effort, learned counsel for the petitioner has not been able to give any plausible explanation.

5. Arguments heard. Record perused.

6. The Supreme Court of Pakistan while dealing with the question of mentioning and proving the **time, date** and **place** where pre-emptor got the information of sale and made *Talb-e-Muwathibat*, in judgments reported as Ch. Riaz Ahmad v. Munir Sultan Malik (2022 SCMR 667), Mir Muhammad Khan and 2 others v. Haider and others (PLD 2020 SC 233) Dr. Pir Muhammad Khan v. Khuda Bukhsh and others (2015 SCMR 1243), Muhammad Amin v. Zulfiqar and another (2014 SCMR 667), Muhammad Hanif v. Tariq Mehmood and others (2014 SCMR 941), Allah Ditta through L.Rs. and others v. Muhammad Anar (2013 SCMR 866), Munawar Hussain and others v. Afaq Ahmed (2013 SCMR 721), Muhammad Ismail v. Muhammad Yousaf (2012 SCMR 911), Fazal ur Rehman v. Khurshid Ali and another (2012 SCMR 635) and Section Officer, Government of the Punjab, Finance Department and others v. Ghulam Shabbir (2011 SCMR 1545) has held that while filing a suit for pre-emption it is mandatory for the plaintiff to mention in the plaint categorical details qua time, date and place and thereupon, prove the same through his evidence.

7. Placing the afore referred case law in juxtaposition with the facts of the present case it has surfaced that it was the case of the petitioner that he went to the office of his Advocate where he made *Talb-e-Muwathibat*, however, in his plaint neither did he mention the name of the Advocate nor his address, hence, he has failed to prove this Talb.

8. In order to fill this lacunae petitioner who appeared as PW 2 has spelled out the name of the Advocate (Mr. Noor Muhammad

Shaukat) whereas the said counsel appeared as PW 1, however, he didn't utter a single word about the fact that in his office *Talb-e-Muwathibat* was made. In fact, in his statement the said witness has taken a stance that for preparing the notice of *Talb-e-Ishhad*, petitioner came to his office.

9. The above discrepancy is material in nature and destroys the case of the petitioner qua making of *Talb-e-Muwathibat*, hence, the suit has rightly been dismissed.

10. Even otherwise the depositions of the petitioner and his witnesses are beyond the scope of pleadings as the contents of the same qua the place of making *Talb-e-Muwathibat* as explained in paragraph Nos. 7 & 8 supra are different, hence, the same cannot be read into. For reference reliance can be placed on Muhammad Aslam and others v. Muhammad Anwar (2023 SCMR 1371), Messrs Pak Suzuki Motors Company Limited through Manager v. Faisal Jameel Butt and another (PLD 2023 S.C. 482), Muhammad Ghaffar (Deceased) through L.Rs. and others v. Arif Muhammad (2023 SCMR 344), Muhammad Rafique and another v. Syed Warand Ali Shah and others (2021 SCMR 1068), Abdul Razaq v. Abdul Ghaffar and others (2020 SCMR 202), Moiiz Abbas v. Mrs. Latifa and others (2019 SCMR 74), Combined Investment (Pvt.) Ltd. v. Wali Bhai and others (PLD 2016 S.C. 730), Muhammad Nawaz alias Nawaza and others v. Member Judicial Board of Revenue and others (2014 SCMR 914), Messrs Essa Engineering Company Pvt. Ltd. and another (2014 SCMR 922), Muhammad Wali Khan and another v. Gul Sarwar Khan and another (PLD 2010 S.C. 295) and Abdul Haque and others v. Shaukat Ali and 2 others (2003 SCMR 74).

11. From further perusal of the plaint, it is also evident that although petitioner has mentioned the names of witnesses of *Talb-e-*

Muwathibat, however, he has failed to mention the names of witnesses of *Talb-e-Ishhad*, therefore, in view of the judgments of the Supreme Court of Pakistan reported as *Hasham Khan (deceased) through L.Rs. v. Waheed Ahmed* (2024 SCMR 353), *Kashmali Khan and others v. Mst. Malala* (2023 SCMR 1176), *Dr. Pir Muhammad Khan v. Khuda Bukhsh and others* (2015 SCMR 1243) and unreported judgment passed in *Civil Petition No.27-L/2016 (Kashif Mahmood (decd) through L.Rs. v. Rasheed Ahmad)*, wherein, it has been held that conspicuous absence of names of witnesses of *Talb-e-Ishhad* in the contents of the plaint is fatal to the suit for pre-emption. In this backdrop, since the names of witnesses of *Talb-e-Ishhad* were not mentioned in the plaint, therefore, the same is fatal for the suit.

12. Under section 13 of the Act, for performance of *Talab-e-Ishhad*, it is mandatory for the pre-emptor that he within two weeks of *Talb-e-Muwathibat*, send notice in writing attested by two truthful witnesses under registered cover acknowledgment due to the vendee. In case, it is disputed by the vendee that he never received the notice, the burden is on the pre-emptor to prove the issuance as well as service of the notice.

13. In the case in hand, as respondent in his written statement as well as in his evidence has denied the issuance and service of notice or *Talab-e-Ishhad*, therefore, it was mandatory for the petitioner to have proved the issuance and receipt/refusal of the notice by producing cogent, concrete and confidence inspiring evidence, which in this case *ex facie* is lacking.

14. The Supreme Court of Pakistan in judgments reported as *Basharat Ali Khan v. Muhammad Akbar* (2017 SCMR 309), *Dayam Khan and others v. Muslim Khan* (2015 SCMR 222), *Allah Ditta through L.Rs and others v Muhammad Anar* (2013 SCMR 866),

Abdul Khan v. Ramzano Bibi (PLD 2013 SC 193), Bashir Ahmed v. Ghulam Rasool (2011 SCMR 762) and Muhammad Bashir and others v. Abbas Ali Shah (2007 SCMR 1105) has laid down parameters for proving *Talab-e-Ishhad*. A cumulative reading of the above judgments would show that in order to prove issuance and service of notice of ***Talab-e-Ishhad***, a pre-emptor has to produce/prove the following:

- a) Notices of Talb-e-Ishhad;
- b) Its two truthful attesting witnesses;
- c) Postal receipts;
- d) Acknowledgement due;
- e) Postman, who effected the service (both acceptance or refusal).

15. In the above backdrop and as admitted by the learned counsel for the petitioner, since the petitioner has failed to produce the acknowledgement due card through which the alleged notice was sent to and received, hence, he has failed to prove this *Talb*. In view of the fact that this document, which was mandatory to prove the said *Talb*, has not been produced, therefore, adverse inference under Article 129(g) of the Qanun-e-Shahdat Order 1984 has to be drawn against the petitioner. Reliance can be placed on Muhammad Naeem Khan and another v. Muqadas Khan (decd) through L.Rs. and another (PLD 2022 S.C. 99), Mst. Zarsheda v. Nobat Khan (PLD 2022 S.C. 21), Muhammad Sarwar v. Mumtaz Bibi and others (2020 SCMR 276), Naveed Akram and others v. Muhammad Anwar (2019 SCMR 1095), Riaz Ahmed v. The State (2010 SCMR 846) and Lal Khan v. The State (2006 SCMR 1846).

16. Placing the afore-noted case law in juxtaposition with the facts of the present, it is manifest that although postman, who alleged to have served the notice of *Talb-e-Ishhad* upon the

respondent has been produced by the petitioner as PW.6, yet in his deposition the said witness has stated that instead of serving the respondent personally notice was served upon one Muhammad Arshad Khan, that too without stating that why would the said notice was to be served upon Muhammad Arshad Khan, therefore, the said service is not valid one and as such the petitioner has miserably failed to prove the issuance and service of notice of *Talb-e-Ishhad* upon the respondent

17. It shall also be apposite to mention here that admittedly respondent was out of country when the notice of *Talb-e-Ishhad* was issued and instead of sending notice to him petitioner tried to serve the respondent through Muhammad Arshad Khan, however, he has not been able to prove that whether Muhammad Arshad Khan was the attorney of the respondent having the authority to receive the notice of *Talb-e-Ishhad* on his behalf. For the sake of argument if this is presumed that the said person was authorized to receive the notice, since the said fact has not been proved by the petitioner, hence, even otherwise, the service was not valid.

18. Since the learned counsel for the petitioner have not been able to point out any jurisdictional defect or procedural impropriety in the impugned judgments and decrees passed by both the courts below, therefore, in view of judgments reported as Nasir Ali v. Muhammad Asghar (2022 SCMR 1054), Khudadad v. Syed Ghazanfar Ali Shah alias S. Inaam Hussain and others (2022 SCMR 933), Mst. Zarsheda v. Nobat Khan (PLD 2022 S.C. 21), Muhammad Sarwar and others v. Hashmal Khan and others (PLD 2022 S.C. 13), Nizam-ud- Din and others v. Sheikh Zia ul Qamar and others (2016 SCMR 24), Iqbal Ahmed v. Managing Director Provincial Urban Development Board, N.W.F.P. Peshawar and others (2015 SCMR 799), Mandi Hassan alias Mehdi Hussain and another v. Muhammad Arif (PLD 2015 SC 137), Mst. Zaitoon Begum v. Nazar

Hussain and another (2014 SCMR 1469) and Haji Muhammad Din v. Malik Muhammad Abdullah (PLD 1994 SC 291) no interference can be made by this Court.

19. In view of the above, this revision petition being devoid of any merits is **dismissed**.

Shafaqat Ali*

(FAISAL ZAMAN KHAN)
JUDGE

Approved for Reporting

JUDGE.