

Judgment Sheet

**IN THE LAHORE HIGH COURT
LAHORE
Judicial Department**

R.F.A.No.7238 of 2022

Manzoor Ahmad, etc.

Versus

Khalid Hassan Khan, etc.

JUDGMENT

Date of hearing: **10.01.2023**

Appellants by: Ch. Muhammad Shakeel, Advocate

Respondents by: Mian Abdul Rasheed, Advocate

MUZAMIL AKHTAR SHABIR, J: Through this Regular First Appeal, the appellants have called in question order dated 17.12.2021 passed by learned Civil Judge, Sheikhupura, whereby suit for specific performance of agreement to sell filed by the appellants under Section 12 of the Specific Relief Act, 1877, has been dismissed for failure to produce evidence.

2. Learned counsel for the appellants states that on one hand, in order dated 13.12.2021, the learned trial court observed that evidence of plaintiffs/ appellants ('*appellants*') was present in the court yet adjourned the matter on the ground that request for adjournment had been made as evidence was not available and on next date i.e. 17.12.2021 went on to dismiss the appellants' suit due to non-availability of evidence and such a contradictory order was not sustainable. Besides sufficient opportunities were not provided to the

appellants to lead evidence as on various dates the matter was fixed for decision of certain applications and not for recording of evidence of the appellants, hence, said adjournments could not be attributed to the appellants to close their evidence.

3. On the other hand, learned counsel for the respondents has defended the impugned order dated 17.12.2021 by stating that various opportunities were provided to the appellants to lead evidence and on their failure to do the same, their right to lead evidence was rightly closed under Order XVII Rule 3 of the C.P.C.

4. Heard. Record perused.

5. The appellants on 10.07.2017 filed suit for specific performance of agreement to sell dated 14.08.2010 against the respondents, which was contested by the respondents and issues were framed on 07.10.2018, where-after on 16.10.2018, fresh power of attorney was filed on behalf of the respondents, whereas Ahmad Raza/plaintiff No. 2 appeared in the court and got recorded his statement. After that the matter was adjourned to 25.10.2018 and although evidence was not available on next some dates, however, on 19.01.2019 when evidence was available in the court for the purpose of recording of the same an application was moved by the respondents under Order VII Rule 11 of the C.P.C, which was kept pending till 25.02.2019 when the same was dismissed as being devoid of merits and matter was fixed on 12.03.2019 for recording of appellants' evidence when adjournment was sought by the appellants. The witnesses were again available on

next date fixed for hearing on 22.03.2019, however, their evidence could not be recorded as respondents were not available for cross-examination. Two witnesses were again available on 30.09.2019 and matter was adjourned for 20.04.2019, however, on 20.04.2019 when witnesses were not available, matter was adjourned to 20.05.2019 for recording of evidence and on the said date, the learned trial court was informed that the order of dismissal of application under Order VII Rule 11 of the C.P.C has been challenged by the respondents before the learned revisional court, where-after matter was adjourned by trial court on various dates for awaiting decision of the same till 14.10.2019, when application was filed on behalf of the respondents to amend their written statement, which matter was adjourned on various dates for proceedings on said application, where-after on 21.03.2020 another application for clarification of order dated 05.09.2018 was filed which was disposed of and matter was listed for hearing on 18.04.2020 for arguments on application for amendment of written statement, which was kept on pending till 18.11.2020 when it was noticed that revisional court on revision against the dismissal of application under Order VII Rule 11 of the C.P.C had passed order to stay the proceedings of the trial court, where-after the matter again kept on lingering for quite some time during which period the case was once transferred from one court to another. On 08.11.2021 the application for amendment of written statement was disposed of and matter was listed for hearing on 25.11.2021, when evidence of the

appellants was not available and matter was adjourned for 01.12.2021 when copy of order of the High Court was tendered, whereby direction had been issued for expeditious disposal of the matter; on both the said dates the matter was adjourned for recording of evidence with costs of Rs. 500/-. On 08.12.2021 the counsel for the appellants sought adjournment as the plaintiff/appellant had seriously fallen ill. The matter where-after was adjourned to 13.12.2021 when evidence was available in the court as per attendance marked by the court, however, in the body of the order it was mentioned that evidence was not available and matter was adjourned for recording of evidence at the appellants' request subject to payment of costs of Rs. 500/- for 17.12.2021. For clarity, the order dated 13.12.2021 is reproduced below:-

“13.12.2021

ORDER

Present:

- *Muhammad Shakeel Advocate on behalf of plaintiff.*
- *Mian Abdul Rasheed Advocate for the defendants*
- **Evidence of plaintiff is present**

Today suit taken up for production/recording entire evidence on behalf of the plaintiffs, with warning of last, final, absolute opportunity, evidence is not present but learned counsel on behalf of plaintiffs again requested for an adjournment without mentioning any plausible reason, for which learned counsel for defendants raised strict objection, which is much plausible, but on request of learned counsel for plaintiffs in the interest of justice, only one last, final, absolute opportunity is hereby granted for production/recording entire evidence of plaintiffs for 17.12.2021 subject to payment of cost Rs. 500/-, in case of failure, right of plaintiffs for production/recording of entire evidence shall be closed under Order XVII Rule 3 of the CPC and no further opportunity shall be granted on any eventuality.”

(Emphasis supplied)

6. On 17.12.2021, the evidence of the appellants was closed and suit was dismissed for want of evidence under Order XVII Rule 3 of the C.P.C. The claim of the appellants is that as their evidence was available in the court on 13.12.2021, therefore, there was no occasion for them to request for an adjournment for recording of evidence and the said aspect of the matter has wrongly been noted by the learned trial court to adjourn the matter and the same could not be used against the appellants to close their evidence on the next date of hearing fixed on 17.12.2021, whereas claim of the respondents is that it had wrongly been noted that evidence was available on 13.12.2021. Perusal of order dated 13.12.2021 shows that although it is mentioned that adjournment was sought by the appellants due to non-availability of evidence yet attendance marked on that date shows that evidence of plaintiff was present. The afore-referred order is contradictory to that extent as on one hand evidence of the appellants was shown to be present whereas on the other hand it was mentioned that evidence was not available and adjournment has been sought on behalf of the appellants, where-after on the next date, due to non-availability of evidence, their right to produce evidence was closed. From the above noted contradiction in order dated 13.12.2021 it cannot be concluded with certainty that request for adjournment had been made by the appellants. The court was required to pass a clear order as to what proceedings had actually taken place on 13.12.2021, however, as the previous order dated 13.12.2021 was contradictory order and from the

facts narrated above, it could not be concluded with precision as to what actually transpired in the court on the said date and it is settled principle of safe administration of justice that an act of court shall prejudice no one. Reliance in this regard is placed on judgment reported as **2022 SCMR 1546** (*Homoeo Dr. Asma Noreen Syed Vs. Government of the Punjab through its Secretary Health, Department & others*) and **PLD 2020 Supreme Court 559** (*Sikandar Hayat and another versus the State and others*). Reliance in this regard may be placed on very recent judgment of the Hon'ble Supreme Court of Pakistan passed in **C.P.No. 2021/2019** titled as **Abdul Qudoos v. Commandant Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar & another** (2022 SCP 352) announced on 04.10.2022, the relevant portion of the same is reproduced below:-

“11. It is the foremost duty of the Court and Tribunal to do complete justice. A patent and obvious error or oversight on the part of Court in any order or decision may be reviewed sanguine to the renowned legal maxim “actus curiae neminem gravabit”, which is a well-settled enunciation and articulation of law expressing that no man should suffer because of the fault of the Court or an act of the Court shall prejudice no one and this principle also denotes the extensive pathway for the safe administration of justice. It is interrelated and intertwined with the state of affairs where the Court is under an obligation to reverse the wrong done to a party by the act of Court which is an elementary doctrine and tenet to the system of administration of justice beyond doubt that no person should suffer because of a delay in procedure or the fault of the Court. This is a de rigueur sense of duty in the administration of justice that the Court and Tribunal should become conscious and cognizant that as a consequence of their mistake, nobody should become a victim of injustice and, in the event of any injustice or harm suffered by mistake of the Court, it should be remedied by making necessary correction forthwith. If the Court is satisfied that it has committed a mistake, then such person should be restored to the position which he would have acquired if the mistake did not happen. This expression is established on the

astuteness and clear-sightedness that a wrong order should not be perpetuated by preserving it full of life or stand in the way under the guiding principle of justice and good conscience. So in all fairness, it is an inescapable and inevitable duty that if any such patent error on the face of it committed as in this case, the same must be undone without shifting blame to the parties and without further ado being solemn duty of the Court to rectify the mistake. Ref: Homoeo Dr. Asma Noreen Syed Vs. Government of the Punjab through its Secretary Health, Department & others (2022 SCMR 1546 = 2022 PLC (C.S) 1390)"

(Emphasis supplied)

7. Moreover, in case reported as **2016 SCMR 40** (*Wasal Khan and others versus Dr. Niaz Ali Khan*) it has been held that courts are under obligation to facilitate the litigants to a maximum extent by passing a clear order, giving direction without any ambiguity to the litigant to act in a certain way and in a particular manner and the litigant should not be pushed into realm of guess work, where in an uncertain situation, he is unable how to proceed and is left guessing as to in what manner to comply with the order of the court. Once it is established that initial error was committed by the learned Civil Judge then the blame cannot be shifted to the party in view of well embedded principle that an act of court shall prejudice none.

8. In the present case, the order dated 13.12.2021 was not passed in clear and unambiguous terms and it is not clear as to whether on 13.12.2021 evidence was available in the court or not and whether adjournment was actually sought by the appellants and if yes under what scenario and in these circumstances coupled with the fact that simultaneously various applications also remained pending before the trial court, the conduct of the appellants could not be declared to be

contumacious, therefore, penal action should not have been taken on 17.12.2021 against the plaintiffs/appellants for the reason that right to produce evidence could only be closed under Order XVII Rule 3 of the C.P.C when on the pen ultimate date request for adjournment had been made by the appellants in clear terms. Resultantly, the impugned order is not sustainable in view of the principle laid down by the Hon'ble Supreme Court of Pakistan in the afore-referred judgments. Furthermore, as the appellants have claimed to have paid the entire amount of consideration against the agreement to the respondents and nothing is outstanding, hence, it would be in the interest of justice that matter is decided on its merits and not on technical grounds besides nothing terrible would happen if another opportunity is allowed to the appellants to lead evidence rather the same would advance the cause of justice.

9. Consequently, we allow this Regular First Appeal, set aside the impugned order dated 17.12.2021 and remand the matter to the learned trial court to provide another opportunity to the appellants to bring their evidence in the court and get the same recorded.

(CH. MUHAMMAD IQBAL) (MUZAMIL AKHTAR SHABIR)
JUDGE JUDGE