

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Ejaz Afzal Khan
Mr. Justice Qazi Faez Isa

CIVIL PETITION NO. 1662 OF 2016.

(On appeal against the judgment dt. 15.03.2016 passed by the Islamabad High Court, Islamabad in C. R. No. 413 of 2015).

Haji Zarwar Khan through L.Rs. ...Petitioner(s)

Versus

Haji Rehman Bangash and others. ...Respondent(s)

For the petitioner(s): Mian Shafqat Jan, ASC.
Mr. Mehmood A. Sh., AOR (Absent)

For the respondent(s): N.R.

Date of hearing: 17.06.2016.

ORDER

EJAZ AFZAL KHAN, J.- This petition for leave to appeal has arisen out of the judgment dated 15.03.2016 of the Islamabad High Court, Islamabad whereby it allowed the petition filed by the respondents and set aside the order dated 8.10.2015 of the Civil Judge 1st Class West, Islamabad.

2. Learned ASC appearing on behalf of the petitioner contended that the judgment rendered in the case of **Muhammad Anwar and others Vs. Mst. Ilyas Begum and others** (PLD 2013 SC 255) is not attracted to the case of the petitioners as they never moved an application in terms of Rule 2 of Order XVI CPC. The case of the petitioners, the learned ASC added, is clearly and squarely covered by Rule 7 of Order XVI and Rule 4 of Order XVIII, CPC as they sought the persons present in the Court to give evidence. He next contended that if the persons present in the Court are not allowed to

give evidence except in accordance with Rule 1 of Order XVI CPC, Rule 7 shall become redundant. He next contended that the well recognized principle of harmonious interpretation requires that all the provisions of the Act be so construed that each of them has a meaning and none of them becomes redundant.

3. We have gone through the record carefully and considered the submissions of learned ASC for the petitioner.

4. Before we appreciate the arguments addressed at the bar by the learned ASC for the petitioner it is worthwhile to refer to Rule 7 of Order XVI which reads as under:-

"16(7). Power to require persons present in Court to give evidence or produce document. Any person present in Court may be required by the court to give evidence or to produce any document then and there in his possession or power."

The rule quoted above provides that any person present in Court may be required by the Court to give evidence or to produce documents then and there in his possession or power. This provision does not apply, where the persons present in Court are required by a party to give evidence. Therefore, we don't think this provision in any way would help the petitioner. Next comes Rule 4 of Order XVIII. Before we appreciate its implication it is also worthwhile to refer thereto which reads as under:-

"18(4). Witnesses to be examined in open Court. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge."

The above quoted rule deals with the mode and manner of recording evidence. It provides that the evidence of the witnesses in attendance shall be taken orally in open Court in the presence and

under the personal direction and superintendent of the Judge. It by no stretch of imagination provides for examination of witnesses who are not mentioned in the list of witnesses. When seen in this context the rule does not advance the case sought to be canvassed at the bar by the learned ASC for the petitioner nor does it appear to be unmeaning or redundant.

5. Having thus examined, the view taken by the High Court appears to be correct and thus merits no interference, notwithstanding the learned Single Judge appreciated the controversy urged before him not by referring to the provisions cited above, but by referring to the judgment rendered in the case of **Muhammad Anwar and others Vs. Mst. Ilyas Begum and others** (supra). This petition is, therefore, dismissed and the leave asked for is refused. However, if the evidence of the witness sought to be examined is necessary for the just decision of the case, the petitioners may, if so advised, apply before the Trial Court under Rule 2 of Order XVI CPC.

Judge

Judge

ISLAMABAD
17.06.2016
M. Azhar Malik

‘Approved For Reporting’