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JUDGMENT SHEET
LAHORE HIGH COURT
BAHAWALPUR BENCH BAHAWALPUR
JUDICIAL DEPARTMENT

C.R. No.507 of 2022

Malik Muhammad Irshad Faiz

Versus

Khadim Hussain

JUDGMENT

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| Date of Hearing: | 18.11.2025 |
| Petitioner by: | Mrs. Samina Qureshi, Advocate. |
| Respondent by: | Mr. Muhammad Saleem Chaudhry, Advocate. Ch. Muhammad Afzal Teija, Advocate. |

Anwaar Hussain, J. Through this Civil Revision under Section 115 of the Code of Civil Procedure, 1908 (“CPC”), challenge has been laid to orders passed by learned Trial Court in suit instituted by the petitioner for recovery of money under Order XXXVII Rules 1 & 2, CPC against the respondent. Through order dated 18.05.2022, the petitioner’s application under Order XVI, Rule 1, CPC for allowing the petitioner to submit list of witnesses beyond 07-days period stipulated under the law was dismissed as the petitioner failed to show sufficient cause. Thereafter, another application was filed for summoning certain bank officials, which application was also dismissed through order dated 07.07.2022.

2. Learned counsel for the petitioner contends that both orders are erroneous and while placing reliance upon case reported as *Amjad Khan v. Muhammad Irshad (deceased) through L.Rs (2020 SCMR 2155)* contends that the object of Order XVI, CPC is that the opposite party is

not taken by surprise regarding the witnesses who are to appear against him and not to penalize the litigant, who fails to submit the list within stipulated time.

3. Conversely, learned counsel for the respondent has supported the impugned findings.

4. Arguments heard. Record perused.

5. The law on the subject is clear inasmuch as Order XVI Rule 1, CPC contemplates that once the issues are framed, list of witnesses is to be submitted within a period of 07-days and it is for the Court to extend the time provided sufficient cause is shown. An application was moved by the petitioner for submission of list of witnesses beyond the said period, however, through impugned order dated 18.05.2022, while placing reliance upon case reported Muhammad Anwar and others v. Mst. Ilyas Begum and others (PLD 2013 SC 255), the Trial Court found that no good cause has been shown and hence, dismissed the said application. Operative part of the impugned order dated 18.05.2022, reads under:

“This application is the subject of Order 16 Rule 1 CPC. Object of O.XVI, R.I(1), C.P.C was to bind the parties to such genuine evidence which was available to them at the time of the start of the trial, so that they should not subsequently avail stock and fudge evidence to make up their cases and the deficiencies. In the instant case issued (*sic*) were framed on 08.11.2021. The plain reading of Order 16 Rule 1 CPC reveals that after the settlement of issues the filing of list of witnesses within seven days is mandatory. The word used in Order 16 Rule 2 is “good cause” for the omission to file the list of witnesses. Scanning, of the application filed by the plaintiff before this court on 29.11.2021, envisages that it has been alleged by the plaintiff/petitioner that he submitted the list of witnesses on 11.11.2021 through clerk to the reader of the court, who/reader informed that the Presiding Officer is on leave, therefore, he/clerk was advised by the reader to submit the list of witnesses on the next date. In para No.2 of the application it has been further mentioned that the clerk did not told (*sic*) this fact to the learned counsel for the plaintiff/petitioner but I am not in agreement with this

contention of the plaintiff because if (*sic*) on 11.11.2021 the undersigned was not on leave. On 11.11.2021 the list of witnesses on behalf of defendant was filed and the undersigned fixed the case for filing of list of witnesses on behalf of plaintiff for 15.11.2021. On 15.11.2021 it was the last day for the plaintiff to submit the list of witnesses as the issues were framed on 08.11.2021. On 15.11.2021 the undersigned was on leave but admittedly the learned Duty Judge was available. The instant application has been filed on 29.11.2021 and infact a concocted story has been planted in para No.2 of the application. Where law required an act to be done in a particular manner, it had to be done in that manner alone and such dictate of law could not be termed as technicality.”

Instead of challenging the above-quoted order, within stipulated period of time, the petitioner filed a second application and prayed that some officials of Muslim Commercial Bank Branch, 42/DB Adda, Tehsil Yazman and JS Bank Ltd., Mandi Branch Bahawalpur alongwith relevant record be summoned. In the second application, the petitioner clearly acknowledged that his earlier application has been dismissed and the dismissal order has not been challenged. The subsequent application was dismissed through impugned order dated 07.07.2022 in the following terms:

“In the application in para No.2 the plaintiff has himself mentioned that previously his application for filing of list of witnesses has been dismissed on 18.05.2022. Perusal of the order sheet reflects that on 18.05.2022 the application for filing of list of witnesses was dismissed. In the said list of witnesses the plaintiff has not mentioned the name of bank officials. It appears that the application filed by the plaintiff on 20.06.2022 is in fact to fulfill the lacunas. The application filed by the plaintiff on 20.06.2022 has not been filed within stipulated period. In these circumstances, the application filed by the plaintiff on 20.06.2022 is hereby dismissed. To come up for evidence of plaintiff with last and final opportunity on 27.07.2022.”

When confronted as to how the second application for submission of list of witnesses was maintainable, learned counsel for the petitioner contends that this was not the second application, under Order XVI, Rule

1 but an application under Order XVI Rule 14, CPC. Before proceeding further and addressing arguments of learned counsel for the petitioner, it will be appropriate to reproduce Order XVI Rule 14, CPC that reads as under:

“14. *Court may of its own accord summon as witnesses strangers to suit.*--Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.”

6. The petitioner asserts that the underlying purpose of Order XVI Rule 1, CPC is to ensure that no party is taken by surprise at the time of recording of evidence. Yet, this very purpose stands negated by the petitioner's own conduct. When the petitioner failed to submit the witnesses list within the statutory period of seven days and the first application for extension of time was dismissed, the proper course available to the petitioner was to immediately challenge that order i.e., 18.05.2022 before the appropriate forum, demonstrating that sufficient cause did indeed exist. Instead of doing so, the petitioner chose a different route and filed an entirely new application seeking summoning of the bank officials—individuals whose names were not included even in the list annexed with the first application. When the first application neither contained the names of bank officials nor set out any justification for their production, the subsequent attempt to bring them in through a fresh application, *albeit* under a different provision, appears nothing more than an effort to cure the petitioner's own procedural lapses. The argument that these officials are now “necessary” and that their absence would cause prejudice cannot retroactively validate what was never pleaded in the first application. If they were truly essential witnesses, their names should have appeared in the first list, or at the very least, the

petitioner should have sought revisional intervention against the earlier dismissal order dated 18.05.2022.

7. It is imperative to observe that Order XVI Rule 14 CPC is not a device for parties to fill gaps in their evidence. It vests a discretionary, *suo motu* power in the Court, which may be exercised if the Court itself finds a person necessary for effective adjudication even though such person is stranger. It is not intended to compensate for negligence or allow a litigant to expand the record after procedural time limits have expired. In these circumstances, allowing such applications would defeat the statutory discipline of Order XVI, Rule 1; undermine the requirement of timely disclosure, and open the door for parties to repeatedly repair their omissions. The discretion under Order XVI Rule 14 squarely belongs to the Court, which may call any stranger on its own assessment; it cannot be demanded as a matter of right by a party that has failed to comply with Rule 1 of Order XVI, CPC.

8. In view of above discussion, the present petition is devoid of any merit and hence, **dismissed**.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting.

Judge

Maqsood