

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Justice Shakeel Ahmad

Justice Aamer Farooq

C.P.L.A.3470/2025

(Against the order dated 21.05.2025 passed by the Lahore High Court, Lahore in W.P.No.30394 of 2025)

Irfan Rasheed

...Petitioner

Versus

Zawar Muhammad Afzal and others

...Respondents

For the Petitioner : Mr. Muhammad Zubair Khalid,
ASC
Ch. Ijaz Akbar Nusrat, ASC
(both via video link from Lahore)

For the Respondents : N.R.

Date of Hearing : 08.10.2025

ORDER

Shakeel Ahmad, J.- This Civil Petition for Leave to Appeal, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, is directed against the order dated 21.05.2025 passed by the Lahore High Court, Lahore, whereby Constitution Petition No. 30394 of 2025, filed by the petitioner against the orders/judgments dated 29.01.2025 & 12.04.2025 of the Civil Judge Class-I, Pindi Bhattian and Additional District Judge, Pindi Bhattian, respectively, was dismissed in *limine*.

2. The necessary facts for adjudication are that the petitioner purchased land measuring 25 kanals from respondents No.5 to 9 for a consideration of Rs. 9,000,000/-, out of which Rs. 3,900,000/- was paid as earnest money on 05.06.2018. An agreement was reduced into writing, and the property to that extent was transferred in the petitioner's name. However, respondents No.5 to 9 subsequently declined to perform the remaining obligations. The petitioner instituted a suit against respondents No.5 to 9, wherein an interim injunction was granted. In parallel, respondents No.5 to 9 instituted a suit for declaration and cancellation of the agreement, which was decreed in their favour on 18.07.2019. The petitioner, thereafter, invoked the provisions of Section 12(2) of the Code of Civil Procedure, 1908 ("**CPC**"), seeking annulment of the said judgment and

decree, alleging fraud, misrepresentation, stating that the said judgment and decree was obtained in connivance with respondents No. 1 to 4. The respondents contested the application by filing their written reply. Vide order dated 29.01.2025, the trial Court dismissed the said application by invoking the provisions of Order XVII Rule 3 CPC. The appellate Court maintained the dismissal order on 12.04.2025. The Constitution petition before the High Court met the same fate, being dismissed in *limine*. Hence, the instant petition.

3. Heard and record perused.

4. It is an admitted position that the petitioner, by invoking the provisions of Section 12(2) CPC, assailed the validity of the judgment and decree dated 18.07.2019, passed in Civil Suit No.443 of 2018 instituted on 20.03.2018. On the basis of divergent pleadings, issues were settled on 11.06.2022. However, despite repeated opportunities, the petitioner failed to lead evidence. Consequently, by application of Order XVII Rule 3 CPC, his right to adduce evidence was struck off, and the application was dismissed for want of evidence through an order dated 29.01.2025.

5. Order XVII Rule 3 CPC plays a pivotal role in maintaining procedural discipline in civil litigation in Pakistan. The provision stipulates that where a party, after having been granted opportunities, fails to produce evidence or perform an act necessary for the progress of the case, the Court may proceed to decide the suit forthwith. It would be advantageous to reproduce the same, which reads as under:

"3. Court may proceed notwithstanding either party fails to produce evidence, etc.-- Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding each default, proceed to decide the suit forthwith."

6. We note with great pain that excessive adjournments have become a chronic affliction of civil litigation in Pakistan. Their corrosive impact on judicial

efficiency, timely dispensation of justice, and public confidence in the legal system has been repeatedly underscored by recent studies¹. Thus, the judicial intervention is crucial for developing effective measures to address this challenge. While the CPC does not prescribe a fixed number of opportunities for the recording of evidence, it vests discretion in the Court to regulate proceedings. The object and legislative intent behind Order XVII Rule 3 CPC is precisely to safeguard the judicial process from being held hostage to dilatory tactics. The provision is a manifestation of the maxim *"interest reipublicae ut sit finis litium"*, which means that it is in the interest of the State that there should be an end to litigation. By its design, the Rule empowers the Court to bring matters to a close on the merits where a party, despite being afforded ample opportunity, defaults in producing evidence or performing acts necessary for the progress of the case.

7. The CPC was enacted during the British colonial era and was uniformly applied throughout undivided India, including the territories now comprising Pakistan. Upon Independence in 1947, the CPC continued to remain in force. Subsequently, minor procedural changes were introduced through Provincial Rules and High Court amendments. However, Order XVII Rule 3 CPC has remained substantially identical to the original provision of 1908. Its consistent application by the Pakistani Courts reflects:

- i. The provision, though a colonial procedural legacy, has been effectively adapted to promote judicial efficiency, as justice demands finality rather than perpetual indulgence.
- ii. Courts are not obligated to pursue indolent litigants who fail to discharge their burden; and
- iii. Procedure is the handmaid of justice and not its mistress; thus, discipline in procedural matters is essential to preserve the integrity of adjudication.

8. Order XVII of the CPC, as originally enacted, comprised three Rules only. Two additional Rules were later

¹ Saqib Javed, Muhammad Ahsan Iqbal and Hafiz Abdul Rehman Saleem, 'A Critical Analysis on Causes and Effect of Baseless Adjournments in Pakistan' (2023) vol 11, no 2 Pakistan Journal of Humanities and Social Sciences 2293–2298.

inserted through the Law Reforms Ordinance, 1972. The entire Order is concerned with adjournments and the consequences of non-appearance or default by parties on the date fixed for hearing. Rules 1, 2, and 3 are closely inter-linked and operate in distinct but related factual situations.

9. Order XVII Rule 1 CPC regulates the grant of adjournments. It empowers the Court to postpone the hearing upon sufficient cause being shown, subject to conditions such as payment of costs, recording of reasons in writing, and limiting the number of adjournments. The salient features of this Rule are that an adjournment is a matter of discretion and not a right; the party seeking it must demonstrate reasonable cause such as illness or absence of a material witness; the Court must exercise its discretion with restraint so that adjournments do not become a means of delay or abuse of process; costs may be imposed to discourage frivolous or repeated requests; and the Court must record its reasons in writing to ensure transparency and accountability. The object of the Rule is to strike a balance between granting fair opportunity to the parties and securing the expeditious disposal of cases.

10. Order XVII Rule 2 CPC prescribes the procedure to be followed when a party fails to appear on the date fixed for the hearing. In such a situation, the Court may proceed in accordance with the provisions of Order IX of the CPC, which governs the consequences of appearance and non-appearance of parties. The core features of Rule 2 are that it applies when any party, whether plaintiff or defendant, is absent on the date of hearing; if the plaintiff is absent, the suit may be dismissed for non-prosecution under Order IX Rule 8 CPC; if neither party appears, the suit is dismissed in default and not decided on merits, and if the defendant, despite service, fails to put his appearance, he is proceeded against ex-parte, and any order passed in default, whether of dismissal or ex-parte, may be set aside under Rules 9 or 13 of Order IX, respectively, upon sufficient cause being shown and subject to limitation.

11. Order XVII Rule 3 CPC is a provision of procedural discipline intended to balance fairness with

efficiency in the administration of justice. While every litigant is entitled to a reasonable opportunity to present their case, such entitlement cannot be construed as a license for endless adjournments or repeated indulgence. The essential preconditions for invoking Rule 3 are that (i) the parties are present in Court, and (ii) the default is in performing an act necessary for the progress of the case, such as producing evidence or summoning witnesses. Once the aforementioned preconditions are fulfilled, the Court is empowered to proceed with deciding the suit forthwith. In *Muhammad Aslam’s*² case, it was elucidated that the expression “*proceed to decide the suit forthwith*” does not oblige the Court to deliver judgment instantaneously. Rather, it authorizes the Court to advance the case without granting further adjournments. The Court retains the discretion to evaluate the material available on record, apply its mind to the evidence, and thereafter pronounce judgment in accordance with law. The distinction between “*decide*” under Rule 3 and “*proceed*” under Rule 2 is, therefore, significant. Rule 2 applies where a party fails to appear, allowing the Court to proceed under Order IX CPC. Rule 3, however, applies when the party is present but defaults in producing evidence or performing an act necessary for the case’s progress. In such a situation, the Court may decide the case on its merits rather than dismissing it for non-prosecution. Furthermore, a decision rendered under Rule 3 operates as a judgment on merits amounting to a decree, the proper remedy against which lies in appeal, and not by way of restoration under Order IX CPC, which applies to an order passed under Rule 2. This distinction was judicially recognized in *Ghulam Qadir’s* case³, wherein it was held that where a party was present but failed to produce evidence despite repeated opportunities, the Court rightly decided the case on merits under Rule 3 rather than dismissing it under Order IX CPC. A brief distinction between Order XVII Rules 1, 2, and 3 is as under:

Aspect	Rule 1	Rule 2	Rule 3
Subject	Grant of	Default in	Default in producing

² Muhammad Aslam v. Nazir Ahmad (2008 SCMR 942)

³ Ghulam Qadir alias Qadir Bakhsh v. Haji Muhammad Suleman (PLD 2003 SC 180)

	adjournment	appearance	evidence despite presence and availing opportunity
Presence of the parties	Irrelevant for adjournments	One or both parties absent	Both parties present
The Court's power	Discretion to adjourn	Procedure under Order IX CPC	Decision on merits (no further adjournment)
Nature of order	Procedural/ interlocutory	Dismissal or ex-parte order	Decision on merits
Remedy	None (interlocutory order)	Restoration under Order IX Rule 9, or an application under Rule 13 CPC, or by preferring an appeal from the decree, or by seeking review, or by filing an application, under Section 12(2) CPC, as the case may be. All these remedies are concurrently open to the defendant.	Appeal
Object	To regulate adjournments	To deal with absence	To prevent delay in disposal of the case

12. In the case of *Rana Tanveer Khan*⁴, this Court held that four opportunities afforded by the trial Court to the plaintiff for producing evidence were sufficient, and that repeated adjournments without substantial justification could not be sustained. Similarly, in *Moon Enterprises*⁵, this Court underscored the need for stricter enforcement by Trial Courts, laying particular emphasis on issuance of clear warnings as to the consequences of non-production of evidence within the timeframe fixed by the Court, including the closure of evidence. It has been observed that the menace of delays and frequent adjournments in civil trials contributes not only to mounting backlogs but also undermines the efficiency and credibility of the justice system. The timely resolution of civil disputes is not merely a statutory entitlement of litigants but also an indispensable attribute of an effective judicial process. Academic literature

⁴ Rana Tanveer Khan v. Naseer-ud-Din (2015 SCMR 1401).
⁵ Moon Enterprises v. Sui Northern Gas Pipelines Limited (2020 SCMR 300)

also recognizes this reality, identifying frequent and unnecessary adjournments as a major cause of delay, leading to financial and emotional strain on litigants, erosion of public trust in the judiciary, and frustration of the right to timely justice⁶. In *Rana Tanveer Khan (supra)*, this Court emphatically stressed that trials must be concluded expeditiously and that only “reasonable adjournments” should be granted, while delaying tactics of litigants ought to be firmly discouraged. Furthermore, in *Settlement Authority*⁷, this Court observed that adjournments sought by proxy counsel, particularly in the absence of the party or principal counsel, are generally disfavoured. All the above-cited precedents underscore the importance of active and diligent participation by litigants in judicial proceedings. Repeated adjournments for producing evidence defeat the very object of Rule 3. Once sufficient opportunities have been granted, the right to produce evidence stands closed, and the Court must proceed to decide the case on the available record. In *Gul Hassan’s case*⁸, this Court held that where a party consistently fails to produce evidence despite availing multiple adjournments, such delays are impermissible and justify dismissal of the case. Therefore, the said Rule is intended to curb procrastination in judicial proceedings and to ensure that a party who has failed to discharge its burden does not prolong litigation indefinitely.

13. The record reveals that the petitioner was granted about ten opportunities to produce his evidence, including last and final chances on 29.10.2024 and 23.11.2024, each accompanied by a clear warning that failure to comply would entail closure of the right under Order XVII Rule 3 CPC. Even thereafter, on 18.01.2025, the trial Court extended one final indulgence, subject to payment of the cost of Rs. 500/-. Despite such leniency, the petitioner failed to adduce his evidence. The trial Court, therefore, rightly invoked the provisions of Order XVII Rule 3 CPC and closed the petitioner’s right to produce evidence.

⁶ Hossain, M. (2019). Backlog of Cases, Civil and Criminal Justice: A Comparative Study, Bangladesh Perspective. *International Journal of Human Rights and Constitutional Studies*, 6(3), pp. 214–226.

⁷ *Settlement Authority v. Mst. Akhtar Sultana* (1976 SCMR 401)

⁸ *Gul Hassan v. Muhammad Ayub* (1986 SCMR 1349)

14. We find no illegality, material irregularity, or jurisdictional defect in the impugned orders passed by the learned Courts below, warranting interference. Consequently, this petition fails and is dismissed. Leave declined. There shall be no order as to costs.

Islamabad
Oct 8th, 2025
M. Rizwan/ Rameen LC

Judge

Judge

Approved for Reporting