

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No. 501/2019

Muhammad Raza Asad

Versus

Gulvaiz Akhtar etc.

Petitioner by: Ch. Manzoor Ahmed Kamboh and
Hafiz Liaqat Manzoor Kamboh,
Advocates.

Respondent No.1 by Ch. Asif Irfan, Advocate.

Date of Decision: 11.03.2020.

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MOHSIN AKHTAR KAYANI J. Through this writ petition, the petitioner has assailed the order dated 22.11.2018, passed by learned Additional District Judge-III (East), Islamabad, whereby the application filed by respondent No.1 for summoning of Postman as witness under Order XVI Rule 1 read with Section 151 CPC was allowed.

2. Learned counsel for the petitioner contends that respondent No.1/Gulvaiz Akhtar has filed suit for possession through pre-emption on 16.10.2009, which has been contested by the present petitioner through his written statement and the learned Trial Court has framed issues on 28.10.2010, whereafter parties were directed to produce their evidence, however, during the course of evidence, respondent No.1 has filed an application for summoning of Postman as witness, which was dismissed by the learned Trial Court vide order dated 28.06.2018, however, the same was allowed in the Civil Revision through the impugned judgment passed by learned Additional District Judge-III (East), Islamabad. It has further been argued that while allowing the said application at such belated stage, the entire concept of Order XVI

CPC has been violated, even no sufficient reason has been put forward by the respondent on record as to why he has filed such application after 08 long years.

3. Conversely, learned counsel for respondent No.1 contends that the application for summoning of Postman was filed in terms of Islamic Law qua the pre-emption of the land and as such there is no procedure under the law provided in a strict sense and the case has to be considered in the light of available material, especially when there is no restriction in any particular law, therefore, under the concept of Islamic jurisprudence the parties are allowed to produce every kind of evidence in order to prove their case and same could not be denied under any principle of law. He further contends that if the Postman has not served the notice, the same will be proved in the course of cross-examination and it will further strengthen the case of the petitioner in all manners. Even it will effect the merits of the case, rather it will further decide the matter on the basis of principle of fairness, equity and justice.

4. Arguments heard and perused the record.

5. Perusal of record reveals that respondent No.1 has filed a suit for possession through pre-emption, which was contested by the petitioner being defendant in the case and issues were framed on 28.10.2010, whereafter the matter was at the stage of closing of evidence, even respondent No.1 while appearing as PW-1 produced the receipt of post as Exh.P2 and notice as Exh.P1, but he has not mentioned the name of Postman in the list of witnesses at the time of filing of the suit, therefore, he has filed an application for summoning of Postman to prove the concept of *Talb-e-Ishhad* as to whether the notice was served upon the petitioner or otherwise. The application was dismissed by the learned Trial Court vide order dated 28.06.2018 and respondent has assailed the same

through Civil Revision before the learned Additional District Judge-III (East), Islamabad, who has allowed the same through the impugned judgment.

6. I have confronted learned counsel for the parties to demonstrate from the record as well as from the law under which suit for possession through pre-emption has been filed, whereby they have unanimously stated before the Court that suit was filed under the Islamic Law and there is no other codified law of pre-emption in the Islamabad Capital Territory, even the petitioner conceded that there is no procedural law to prove the concept of pre-emption in the Islamabad Capital Territory, therefore, at this stage, the general principle of law would be applicable for the purpose of reference.

7. While considering this backdrop, I have gone through the application filed by the respondent No.1 for summoning of Postman under Order XVI, Rules 1 & 2 read with Section 151 CPC, whereby he has taken a specific stance in para-3 of the said application, which is as under:-

“That from the bare perusal of the written statement, it divulges that the notice talb-e-ishad has been denied evasively denied by the respondent/defendant, although the same was sent by the applicant/plaintiff through registered post acknowledgment due, but as the clear and apparent stance, free from ambiguity and vagueness does not surface from the contention of respondent/defendant, hence to prove the service of notice talb-e-ishad, it is of much importance to summon the postman alongwith relevant record to got record his testimony to the effect of service of notice talb-e-ishad.”

8. The said stance of the respondent has been denied only on one ground that the application has been filed after 06 years without any justification, without showing any good cause. The ground referred in para-3 of the application clearly spells out that the petitioner being defendant has denied the notice of the *Talb-e-Ishaad* in an evasive manner and even the respondent while

appearing as PW-1 in the evidence produced the notice of *Talb-e-Ishaad* as Exh.P1 on record and the receipt No. 344, Exh.P2, whereas nothing has been brought on record by the petitioner side to rebut the same. Even otherwise, when the postal receipt was already available on record and there is no denial by the petitioner side being defendant, then there would be no harm if the Postman has been called in evidence as the respondent No. 1 is not creating a new thing, rather he is substantiating his postal receipt to prove the service of notice by way of Postman, which is the requirement as held by the superior Courts in case reported as **2011 SCMR 762 (Bashir Ahmed Vs. Ghulam Rasool)**. Although the said law is not relevant to this case i.e. The Punjab Pre-Emption Act 1991, but the said principle can be followed as reference. Even otherwise, if the Postman has been summoned in Court, the respondent would cross-examine him to extract the truth and the question of disputed fact qua the service of notice will be appreciated only in this manner by the learned Trial Court.

9. I have attended the proposition in terms of Order XVI CPC and there is no denial to the proposition that technicality should not be allowed to thwart the ends of justice and even the matter has not yet been concluded in the Trial Court.

10. Besides the above referred position there is another change emerged in the present situation, whereby the Hon'ble Bench-IV of this Court has adjudicated upon the matter through **C.R No. 129/2019 (Rab Nawaz and others Vs. Rusmat Ali)** vide judgment dated 04.12.2019, wherein it has been held that the Punjab Pre-emption Act, 1913 is applicable to Islamabad Capital Territory, which is continued to apply in the Islamabad Capital Territory by virtue of Article 19 of the President's Order No.1 of 1970, therefore, in this situation, when the Islamabad High Court has taken this view regarding the application of law then all the

proceedings have to be regulated under the said law in strict sense and in this eventuality, the rights of the parties could be considered and they be given a complete authority to justify their case in the light of emerging position.

11. I have also considered this matter under the procedural law of Islamic Sharia, whereby it is the cardinal Islamic jurisprudence that parties be allowed to produce every kind of evidence to substantiate their case, even it is settled principle of Holy Quran in *Surah An-Nisa* Verse No. 135 and *Surah Al-Baqarah* Verse No. 283, which directs every individual to give evidence and do not suppress any evidence for he, who hides it, surely his heart is sinful, even Verse No. 105 of *Surah An-Nisa* imposes the duty upon the Court to decide the matters in accordance with the Holy Quran on the basis of Haq (right) all these principles of Holy Quran left nothing in favour of petitioner and the Court has rightly adjudicated upon the matter on the principle of fairness, equity and justice, even no prejudice would be caused to the petitioner at this stage, who has been allowed to cross-examine the Postman.

12. For what has been discussed above, instant writ petition is misconceived and same is hereby **DISMISSED**. However, it has been noted with great concern that the civil suit is pending since 2009 and same has not yet been concluded, therefore, learned Trial Court seized with the matter is directed to conclude the same within six (06) months under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN