

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

R.F.A.No.130 of 2018

Ranaz Hussain

**Versus**

Mumtaz Khan

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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**17.12.2019**

**Raja Muhammad Nadeem Kiani, Advocate for the appellant,  
Barrister Talha Ilyas Sheikh, Advocate for the respondent.**

Through the instant appeal, the appellant, Ranaz Hussain, impugns the order dated 06.01.2018 passed by the Court of the learned Civil Judge, Islamabad, whereby his right to produce evidence was struck off by invoking the provisions of Order XVII, Rule 3 of the Code of Civil Procedure, 1908 ("C.P.C.").

2. Learned counsel for the appellant submitted that the learned Civil Court should have given a last and final opportunity to the appellant to produce evidence; that the appellant is ready with his evidence, and if a single opportunity was afforded to him, he would produce his evidence on the day fix by the Court and shall not seek any adjournment; and that if the appellant is not permitted to produce evidence, he shall suffer irreparably. Learned counsel for the appellant prayed for the appeal to be allowed and for the impugned order dated 06.01.2018 to be set-aside.

3. On the other hand, learned counsel for the respondent drew the attention of the Court to the order sheet of the learned Civil Court and submitted that several opportunities had been granted to the appellant to produce evidence. He further submitted that a notice under Order XVII, Rule 3 C.P.C. had also been issued to the appellant; and that the appellant was trying to delay the proceedings before the

learned Civil Court. Learned counsel for the respondent prayed for the instant appeal to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. The order sheet of the learned Civil Court shows that on 28.10.2017, the appellant was given one more opportunity to produce his evidence. The appellant was also warned that if he does not produce evidence on the next date of hearing, his right to produce evidence would be closed. On the next date of hearing (i.e. 11.11.2017), the learned Presiding Officer was on leave. On 18.11.2017 and 09.12.2017, the appellant did not produce his evidence. The appellant was given a last and final opportunity to produce his evidence on 06.01.2018. On 06.01.2018, defendant No.3 was in attendance but his counsel sought an adjournment. Consequently, vide order dated 06.01.2018, the appellant's right to produce evidence was struck off. The order sheet reveals that the appellant was given ample opportunities to produce evidence.

6. The respondent has filed a suit for declaration, specific performance and mandatory injunction against *inter alia* the appellant before the learned Civil Court. This suit has been clubbed/consolidated with the suit for possession, recovery of *mesne* profit/rent and permanent injunction filed by the appellant against *inter alia* the respondent. Since both the suits have been clubbed, it would be in the interests of justice, if the appellant is granted just one opportunity to produce his evidence. However, since the appellant had sought several adjournments before the learned Civil Court, I am inclined to allow this appeal subject to the payment of heavy costs.

7. In view of the above, the instant appeal is allowed and the impugned order dated 06.01.2018 is set-aside subject to the payment of costs amounting to Rs.25,000/- by the appellant to the respondent, on the next date of hearing before the learned Civil Court. In the event, the costs imposed are not deposited as directed, the learned Civil Court would be at liberty to proceed with the case and hear the arguments.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

Sultan\*