

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 12/2019.

Syed Hashim Jawad Gillani

Versus

Ms. Scherezade Jamali, etc.

Civil Revision No. 170/2019.

Faisal Jamali, etc.

Versus

Syed Hashim Jawad Gillani, etc.

Petitioners by: Mian Muhammad Kashif, Advocate in C.R No.12/2019.
Mr. Wajid Hussain Mughal, Advocate in C.R No.170/2019.

Respondents by: Mr. Wajid Hussain Mughal, Advocate in C.R No.12/2019.
Mian Muhammad Kashif, Advocate in C.R No.170/2019.

Date of Decision: 03.07.2019.

MOHSIN AKHTAR KAYANI, J:- Through this common judgment, I intend to decide the captioned Civil Revision Petitions, as common questions of law and facts are involved in these petitions.

2. In Civil Revision No.12/2019, the petitioner Syed Hashim Jawad Gillani has assailed the order dated 07.12.2018, whereby the trial Court has discarded the evidence of PW-4 (Syed Munir Sikandar), who stated to be performed role of mediator between the parties through an alternate dispute resolution mechanism and on this score the objection has been raised by the respondents side that PW-4 cannot appear as witness in favour of plaintiff. During the course of arguments learned counsel for respondents has given the consent in open Court to allow the petitioner for submission of evidence of PW-4 Syed Munir Sikandar.

3. In Civil Revision No.170/2019, the petitioners Faisal Jamali and Zahid Hussain Jamali have assailed the order dated 15.04.2019 and 20.04.2019, whereby trial Court has closed the right to produce evidence and refused to allow the petitioners to call Secretary, DHA for production of record of the suit property.

4. Learned counsel for the petitioners in C.R No.170/2019 contends that trial Court has passed the order for closing down the evidence by passing day to day orders without any opportunity for production of evidence despite the fact that petitioners have raised a specific plea that their witnesses are out of country and matter relating to the evidence of PW-4 is pending before Islamabad High Court in C.R. No.12/2019; that the summoning of record keeper of DHA is mandatory for resolution of title whereas name of the record keeper, DHA was not referred in the list of witnesses as it is the statutory duty of the trial Court to decide the *lis* in accordance with law and for the purpose of just decision of the case, it is mandatory to exercise such kind of powers for summoning of record keeper without any objection.

5. Conversely, learned counsel for the respondent Syed Hashim Jawad Gillani in C.R No.170/2019 contends that trial Court has given number of opportunities to the petitioners for production of their witnesses but the petitioners have not submitted the evidence as a result whereof their right to produce evidence has rightly been closed by the trial Court.

6. Arguments heard, record perused.

7. Perusal of record reveals that petitioner in C.R No.12/2019 is aggrieved with the order passed by the trial Court dated 07.12.2018, whereby petitioner's witness PW-4 who acted as mediator between the parties with the consent of the parties was not allowed to appear as witness and his examination-in-chief already recorded by the trial Court was discarded. The said order has been assailed by the petitioner but respondents' side has conceded the proposition

and stated at the bar that they have no objection if the evidence of PW-4 is recorded as witness in favour of plaintiff, therefore, C.R No.12/2019 is allowed and order dated 07.12.2018 of the trial Court is hereby set aside and trial Court is directed to record evidence of PW-4 in accordance with law.

8. On the other hand in C.R. No.170/2019, the petitioners have not been allowed to produce evidence of record keeper of DHA and their right to produce evidence has been closed. Perusal of record reveals that trial Court has fixed the case for recording of evidence of defendants/petitioners vide order dated 12.04.2019, 13.04.2019 and last opportunity was granted to the petitioners for production of their evidence and matter was adjourned to 17.04.2019 with another opportunity with notice U/O XVII Rule 3 CPC and finally one further opportunity was granted vide order dated 19.04.2019 for production of evidence and matter was adjourned to 20.04.2019 with direction that "failing which the right to produce evidence of defendants would be closed." However, on 20.04.2019 right to produce evidence of petitioners/defendants was closed.

9. Perusal of record and entire order sheets dated 12.04.2019, 13.04.2019, 17.04.2019, 19.04.2019 and 20.04.2019 reveal that petitioners/defendants have not put their appearance, nor their counsel appeared which clearly spells out that the defendants were not present, nor their witnesses were present in the Court and trial Court has passed appropriate orders, even warning was given prior to closing right of petitioners to produce evidence but despite such warnings and directions petitioners have not taken the directions of the trial Court in a serious manner, which resulted into closing down of their right to produce evidence by the trial Court.

10. While observing the entire background, this Court comes to the irresistible conclusion that right to produce evidence has rightly been closed by the trial Court. However, the second question which requires determination is the

summoning of Secretary, DHA as Court witness, which has been called through an application by the defendants/petitioners to place the complete record of DHA of the Plot No.15-A and 23-A. In order to determine the real controversy as to whether any fraud has been committed or otherwise, the suit in which all these orders have been passed is regarding cancellation of documents, declaration with consequential relief and injunction and the question relating to the ownership is key to resolve the dispute of the parties, although defendants have not submitted list of witnesses and their conduct is contemptuous. The law on the subject with reference to summoning of witnesses in terms of Order XVI Rule 1 CPC has been settled by the Apex Court in the recent judgment reported as PLD 2013 SC 255 (Muhammad Anwar Vs. Mst. Ilyas Begum), therefore, order passed by trial Court is in line with the settled principles.

11. Perusal of record further reveals that similar application for production of witnesses on behalf of plaintiff has been filed stating therein names of 13 witnesses including the record keeper of DHA and the said application was allowed vide order dated 07.09.2016, whereby record keeper was allowed to be produced through Court, even the record keeper, DHA was present before the trial Court on 30.11.2018 but his evidence could not be recorded. The trial Court issued bailable warrants of arrest subject to surety of Rs.20,000/- for the witnesses summoned through Court vide order dated 07.12.2018 but no report is available on record through which it could be assumed that summoned witnesses refused to appear or they were exempted from appearance. The next order of the trial Court is also reflecting the same position where bailable warrants of arrest were issued.

12. The record further reflects that on 21.12.2018, 02.01.2019, 10.01.2019, 18.01.2019 lawyers of Islamabad Bar Association were observing strike and record keeper, DHA has not put appearance even on 23.01.2019 and 04.02.2019,

therefore, trial Court notified the bailiff for execution of warrants for summoning the witness but surprisingly plaintiff has taken U-turn in this case on 18.02.2019, whereby his counsel namely Nasir Mehmood, Advocate has recorded his statement that under the instruction of his client he withdraw the request and do not press the summoning of summoned witnesses including the record keeper of DHA, as a result whereof,ailable warrants issued by the trial Court have been withdrawn on the same date.

13. This entire background clearly spells out the strategic moves of the learned counsel as well as the plaintiff, however, all these strategies are not meant for the trial Court as the Courts are bound to resolve the issues in accordance with law and if the Courts visualize the proposition in order to achieve just decision, the Courts can call any such witness which is necessary to be called in the relevant circumstances. The controversy revolves around the determination of title from the DHA record and without summoning the said witness, it could not be possible to resolve the controversy, where the said witness has been called by any party or given up by any of the party, even then trial Court is equipped with unlimited powers to call such witness under the law, therefore, instant Civil Revision No.170/2019 is partly allowed to the extent of summoning of record keeper, DHA at the costs of defendants, whereby trial Court shall call the Secretary, DHA through telephonic mode as well as through bailiff subject to submission of charges borne by defendants side.

14. Before parting with the said judgment, the proceedings conducted by the trial Court are highly appreciated, which shows his dedication towards compliance of direction of superior Courts in a proper manner.

(MOHSIN AKHTAR KAYANI)
JUDGE