

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

C.R. No.302/2018

Abdul Saeed Khan

versus

Waheed Ahmad

Petitioner by: Mr. Muhammad Owais Waheed, Advocate.

Respondent by: Mian Imran Masood, Advocate.

Date of Decision: 24.06.2019.

MOHSIN AKHTAR KAYANI, J: Through this civil revision, the petitioner impugns the order dated 22.09.2018 of the learned Civil Judge 1st Class (West), Islamabad, whereby petitioner's right to adduce documentary evidence was struck off under Order XVII Rule 3 CPC.

2. The facts in brief as referred in the instant petition are that respondent filed civil suit titled "*Waheed Ahmad v. Abdul Saeed*" on 25.06.2014, which was contested by the petitioner by filing his written statement on 21.10.2014, whereas issues were framed on 17.11.2014 followed by oral and documentary evidence by the respondent. The petitioner closed his oral evidence on 29.05.2018 and desired to produce certified copies of record of civil suit titled "*Sarfraz Malik v. Abdul Saeed*" as evidence. The petitioner applied for certified copies of said suit on 09.06.2018, which was not prepared by the concerned branch of the Civil Court for the reason that record of said suit was misplaced. On this pretext, the petitioner sought time from the learned trial Court to produce the record of said suit as evidence as well as sought indulgence of the learned Senior Civil Judge, Islamabad, but of no avail and

ultimately, vide the impugned order dated 22.09.2018, right of petitioner to adduce documentary evidence has been closed. Hence, the instant civil revision.

3. Learned counsel for petitioner contends that the impugned order of the learned trial Court suffers from irregularity as petitioner has made all efforts to get certified copies of the record, but failure is on the part of administrative side of the learned Civil Court in providing certified copy, hence the same cannot be allowed to prejudice the case of petitioner; that the learned trial Court has acted illegally by closing the right of petitioner to adduce documentary evidence, which is essential for the defence of the appellant; that the learned trial Court did not follow the well settled principles of objectivity, rationality, and equity while passing the impugned order, which is liable to be set-aside.

4. Conversely, learned counsel for respondent contends that the petitioner has not mentioned the details of documents which he intends to produce before the Court, rather he delayed the proceedings without any substantial cause, therefore, the instant civil revision be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that Waheed Ahmad/respondent has filed a suit for recovery of outstanding rent and damages as compensation against petitioner, which was contested by petitioner and issues therein were framed on 17.11.2014. However, after completion of evidence of plaintiff, the suit was fixed for recording of evidence of defendant/petitioner and on 29.05.2018, oral evidence of the petitioner was recorded and consequently the matter was adjourned for

submission of documentary evidence on behalf of petitioner for 09.06.2018, 20.06.2018, 26.06.2018, 03.07.2018, 10.07.2018, 18.07.2018, 23.07.2018 and 13.09.2018, even otherwise, many warnings had also been given to the petitioner and finally a notice was issued in terms of Order XVII Rule 3 CPC. Despite the said proceedings, the petitioner failed to produce his documentary evidence, which resulted into passing of the impugned order on 22.09.2018, whereby petitioner's right to adduce documentary evidence was closed in terms of Order XVII Rule 3 CPC.

7. Petitioner has taken the specific stance that he informed the court that he intends to place certified judicial record of a suit, for which he has already applied vide receipt No.15946, dated 09.06.2018, but the said record was not supplied by Copying Agency of the Civil Court and this fact also reflects from the order sheet, even a receipt of the copying branch is available on record.

8. This entire background of the case reveals that the documentary evidence is not available with petitioner despite his best effort and it is beyond his control to produce the certified record, which is in the record room and the copying agency has misplaced the same, therefore, proprietary demands that petitioner may be granted at least one opportunity to secure certified record and produce it before the Court for just decision of the case, whereas the said suggestion has also been halfheartedly conceded by the respondent side subject to heavy cost.

9. For what has been discussed above, the instant civil revision is ALLOWED and impugned order dated 22.09.2018 is hereby SET ASIDE. However, the petitioner is directed to produce the certified judicial

record as documentary evidence with one opportunity subject to payment of cost of Rs.20,000/- to respondent on the next date of hearing before the learned trial Court, failing which the learned Trial Court is at liberty to proceed in accordance with law.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.