

Form No: HCJD/C

**ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**Civil Revision No. 476 of 2019**

Anwar Saifullah

Versus

Muhammad Bilal Javed.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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**05.12.2019. Qazi Ghulam Dastgir, Advocate  
for petitioner.**

Through the instant petition, the petitioner has assailed order dated 18.11.2019, whereby application for summoning of witnesses was turned down by the learned Trial Court.

2. The facts, in brief, are that the petitioner is defendant in the suit filed by respondents No.1&2. During the course of proceedings, an application was filed for summoning of witnesses and record of the Sub-Registrar/Tehsildar as well as the Halqa Patwari, which was turned down vide the impugned order.

3. Learned counsel for the Petitioner, *inter-alia*, contended that the Halqa Patwari and Registrar are parties in the suit and

they are called only to produce the record. It was further contended that the witnesses and the record are material for adjudication of the case. In support of his contentions learned counsel for the petitioner placed reliance on cases reported as **"Zahid Khan vs. Shoaib Ahmad" (2016 CLC 1637), "Dr. Professor M.A. Cheema vs. Tariq Zia" (2016 SCMR 119), "Mst. Balqees Akhtar vs. Additional District Judge" (2013 MLD 1686), "Messrs Varan Tours vs. Province of Punjab" (2011 YLR 5) and "Imam Bakhsh vs. Mst. Ameeran Mai" (2014 YLR 1639).**

4. Arguments advance by the learned counsel for the petitioner have been heard and the documents placed on record examined with his able assistance.

5. The petitioner is aggrieved of dismissal of his application for summoning the Halqa Patwari to produce certain record. Admittedly, after the framing of issues, the petitioner did not file the list of witnesses within seven days as prescribed in order XVI Rule 1 CPC. Under Order XVI Rule 2 of CPC 1908, the Court can allow the production of a witness or any document where good

cause is shown for not including the said person in the list of witnesses. In this behalf, the Hon'ble Supreme Court of Pakistan in case reported as **"Muhammad Anwar vs. Mst. Ilyas Begum" (PLD 2013 SC 255)**, observed as follows:-

**"7. Be that as it may, before proceeding with the matter further in the context of answering the propositions herein involved and for the purposes of interpretation of sub-Rules (1) and (2) of Order XVI, C.P.C. and for elucidation of the said question, I would also like to resort to another expression i.e. "sufficient cause" which has been used by the legislature in the provisions of Civil Procedure Code, specially in Order IX, Rule 9 and Order IX, Rule 13 as against the word "good cause" used in Rule 7 of the said Order (IX of C.P.C.); besides Order XLI, Rule 19 thereof. Rules 9 and 13 ibid pertains to setting aside of an ex parte proceedings or the decree on the behest of defendant(s) of a case who must establish a 'sufficient cause' while under Rule 7 supra, the plaintiff whose suit has been dismissed for non-prosecution, should show a good cause for seeking its restoration. The distinction between the two expressions shall be made in the succeeding part of the judgment. Anyhow with reference to the proposition(s) in hand, XVI(2) can validly be bifurcated into two parts, firstly, it has been made incumbent upon a party, rather a duty has been cast upon the delinquent party to show 'good cause' for omission to file the list of witnesses or the name of a particular witness and the second part is meant to regulate the power, authority and the discretion of the Court in relation to the grant of permission**

**8. For the purpose of comprehending the first part, it shall be relevant to ascertain the true meaning of the expression 'good cause' which according to Black's Law Dictionary Eighth Edition means "A legally sufficient reason. Good cause is often the burden placed on a litigant (usu. By court rule or order) to show why a**

request should be granted or an action excused.--Also termed good cause shown; just cause; lawful cause; sufficient cause". Whereas, according to the said dictionary "sufficient cause" bears the same meaning as "good cause" and thus both the words can be held to be considerably analogue and interchangeable expressions, yet as per the precedent law, 'good cause' has been construed in wider terms than 'sufficient cause'<sup>11</sup>. Though no hard and fast, and absolute criteria can be set forth, as benchmark, to test, if a case of omission to file the list of witnesses or a name in such list is on account of 'good cause', as it depends upon the facts of each case, however, the party in default has to show a legally sufficient reason, why a request should be granted or the inaction/omission should be excused, in other words, the Judicial conscious of the Court should be satisfied with justifiable reasons. In any case, a party in default cannot, as a matter of right or as a matter of course without assigning or establishing any good cause for the omission, ask for the calling/summoning or even to produce the witness(es) only on account of a lame excuse/reason and a bald assertion that, it shall be in the interest of justice and/or it shall facilitate the Court in deciding the matter".

6. In view of the above judgment of the august Apex Court, the good cause has to be substantiated and the learned Trial Court has to spell out the reasons for allowing the evidence of such witness or production of the document. The case law cited by the learned counsel for the petitioner does not come to his aid as some of the cases endorse the position as laid down in the abovementioned case. Reliance is placed on case reported as **"Dr.**

***Professor M.A. Cheema vs. Tariq Zia”***  
***(2016 SCMR 119)***. However, it is only a witness who needs to be summoned by the Court that his name has to be included in the list of witnesses where a witness comes voluntarily or is produced by a party such restriction does not apply in the said case. Reliance is placed on case reported as ***Zahid Khan vs. Shoaib Ahmad” (2016 CLC 1637)***.

7. In view of the above, the instant petition is without merit and is accordingly **dismissed in *limine***.

**(AAMER FAROOQ)**  
**JUDGE**

***\*Shakeel Afzal\****