

Form No: HCJD/C-121

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Civil Revision No.286 of 2019

Adnan Hamayon.

Versus

Arjamand Jahangir.

Petitioner's by : Ch. Afrasiab Khan, Advocate.

**Respondent's by : Syed Adil Safdar Gardezi and
Syed Nadeem Hussain Shah,
Advocates.**

Date of Decision : 29.01.2020

AAMER FAROOQ, J. - The facts, leading to filing of the instant petition, are that the petitioner filed a suit against the respondent. During the course of trial, the petitioner filed two applications; one for summoning record of Judicial Magistrate for bringing on record the original cheques and memorandum of slip issued by the concerned bank and second for adducing in evidence a USB allegedly containing conversation helpful to the case of the petitioner and other documents including Talaqnama, affidavit etc. The said applications were dismissed by the learned Trial Court, hence the instant petition.

2. Learned counsel for the petitioner, *inter-alia*, contended that the mere technicalities cannot thwart substantive justice. It was contended that in light of the decision of the Hon'ble Supreme Court of Pakistan in "*Muhammad Ijaz Ahmad Chaudhry Vs. Mumtaz Ahmad Tarar and others*" (**2016 SCMR 1**), a document can be placed on record at any stage of the proceedings. Reliance was also placed on "*Messrs Bisvil Spinners (Pvt.) Ltd. Vs. Pakistan through Secretary, Ministry of Finance, Islamabad and 2 others*" (**PLD 1992 SC 96**). When confronted whether the referred documents were included in the list under Order XIII Rule 1 C.P.C. and the name of the relevant witness in the list under Order XVI Rule 1 C.P.C. the answer was in negative.

3. Conversely, learned counsel for respondent submitted that under Order XVI Rule 1 C.P.C. no witness can be summoned, whose name is not mentioned in the list of witnesses nor any document can be produced if the same is not mentioned either in the list of reliance or the documents appended with the plaint as provided in Order XIII Rule 1 C.P.C. Reliance was placed on cases reported as "*Kohinoor Tobacco Company (Pvt.) Ltd. Vs. S.M. Idrees Allawal*" (**2013 CLC 1789**), "*Messrs Javed Nazir Brothers (Pvt.) Ltd. Vs. Al-Barak Islamic Bank and others*" (**2008 CLC 722**), "*Sardar Iftikhar-ud-Din Khan and 4 others Vs. Additional District Judge, D.G. Khan and another*" (**2009 YLR 2265**), "*Nasrullah Khan and others. Vs.*

Mst. Bashiran Bibi and others" (2012 CLC 234), "Mst. Balqees Akhtar Vs. Additional District Judge and others" (2013 MLD 1686), "Professor Syed Khurshid Alam Vs. Ch. Muhammad Aslam" (2014 CLC 188), and "Trading Corporation of Pakistan (Pvt.) Ltd. Vs. Haji Khuda Bux Amir Umar (Pvt.) Ltd. and others" (2017 CLC 1387).

4. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

5. The grievance of the petitioner is that his applications for summoning the record from Judicial Magistrate and leading in evidence additional documents including USB were turned down. It is an admitted position that in the list of witnesses the Record Keeper/Investigating Officer or the Ahlmad of the Judicial Magistrate is not a witness, which is to be summoned. In the application filed for summoning the record no good cause has been shown why omission with respect to the same was made. Similarly, the documents mentioned in the application for adducing additional documents as evidence; the referred documents do not find mention in the list of documents filed alongwith the plaint or the list of reliance as provided in Order XIII Rule 1 C.P.C., no good cause has been shown in the applications for omission on part of the petitioner/plaintiff.

6. In view of the referred position, the learned Trial Court has taken the correct view that at this stage the

applications are not maintainable. Reliance is placed on cases reported as "*Trading Corporation of Pakistan (Pvt.) Ltd. Vs. Haji Khuda Bux Amir Umar (Pvt.) Ltd. and others*" **(2017 CLC 1387)**, "*Professor Syed Khurshid Alam Vs. Ch. Muhammad Aslam*" **(2014 CLC 188)**, "*Mst. Balqees Akhtar Vs. Additional District Judge and others*" **(2013 MLD 1686)** and "*Nasrullah Khan and others. Vs. Mst. Bashiran Bibi and others*" **(2012 CLC 234)**. In view of the referred position, the order impugned does not suffer from any error of jurisdiction warranting interference in the instant petition. The case law relied upon by learned counsel for the petitioner is not relevant in the facts and circumstances of the case inasmuch as in the judgment of the august Apex Court relied upon by learned counsel for the petitioner, the proceedings had emanated from the Election Tribunal, wherein the Code of Civil Procedure is not applicable.

7. For the above reasons, the instant petition is without merit and is accordingly **dismissed**.

(AAMER FAROOQ)
JUDGE

M. Zaheer Janjua