

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

Civil Revision No. 240/2019
Shifa Foundation and another
Versus
Professor Dr. Saiful Islam Saif

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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10.02.2020	M/s Fawad Saleh and Ali Nawaz Kharal, Advocates for petitioners. Syed Ishtiaq Haider & Malik M.Yaqoob, Advocates for respondents.
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Through the instant civil revision petition, petitioners assail order dated 11.05.2019 passed by learned Civil Judge 1st Class, Islamabad-West whereby their application for submission of list of witnesses was dismissed.

2. Learned counsel for the petitioners contends that provisions of Order XVI Rules 1&2 CPC are technical in nature and Court is authorized to record evidence of any witness, who is present in the Court; that counsel for the petitioners was changed so list of witnesses could not be filed within time, therefore, impugned order is liable to be interfered with. Learned counsel placed reliance upon case laws cited as PLD 1980 Lahore 495 {Ghulam Murtaza. Vs. Muhammad Ilyas and 3 others}, PLD 1980 Lahore 506 {Muhammad Bakhsh and another. Vs. Haq Nawaz}, 2005 MLD 688 [Lahore] {Haji Muhammad Tufail. Vs. Muhammad Iqbal}, 2005 MLD 690 {Muhammad Qayum. Vs. Abdul Baseer}, 1986 SCMR 1382 {J.H. Abraham. Vs. Aziz Aslam}, 2011 YLR 2393 [Lahore] {Mustansar Ali. Vs. Tariq Mahmood}, 2003 MLD 1521 [Lahore] {Muslim Insurance Co. Ltd.

through Chief Executive. Vs. Zamindara Paper and Board Mills limited through Chief Executive and another}, 2004 SCMR 1367 {Umar Hayat. Vs. Additional District Judge and others}, 2013 CLC 241 [Lahore] {Shakil Haider and others. Vs. M.Tufail and others}.

3. On the other hand, learned counsel for the respondent contends that after closure of the evidence of petitioners/defendants, case is fixed for final arguments, hence, the instant civil revision petition has been rendered infructuous while on merits learned counsel has referred case law cited as 2016 SCMR 1976 {Haji Zarwar Khan through LR's. Vs. Haji Rehman Banghash and another} wherein, it is held mandatory upon the party, who wants to produce the evidence, to file list of witnesses within seven days after settlement of issues.

4. When learned counsel for the petitioners was confronted that suit has been fixed for final arguments, so what is his stance regarding argument of learned counsel for respondent that instant civil revision petition has become infructuous, at this stage learned counsel for the petitioners emphasized that he wants to argue his case and disposal of instant civil revision on merits.

5. Heard the learned counsel for the parties and perused the record with their able assistance.

6. When record examined, it shows that issues in the subject case were framed on 14.03.2015 and as per Order XVI Rule 1 CPC parties are bound to file certificate of readiness to produce evidence alongwith a list of witnesses whom they propose to call, either to give evidence or to produce

documents. This provision of the Civil Procedure Code begins with the words "*not later than seven days after the settlement of issues*". It further states that a party *shall not be permitted to call witnesses* other than those contained in the said list, except with the permission of the court and after showing good cause for the omission of the said witnesses from the list; and if the Court grants such permission, it shall record reasons for so doing.

7. On perusal of the provision, it reveals that the same is the mandatory requirement to file list of witnesses not later than seven days after the settlement of issues and it is not merely a technical issue. Guidance in this respect is sought from the case of Muhammad Khalid. Vs. Mehmooda Khanum and nine others {2008 YLR 1871}, wherein it is held that "*filing of list of witnesses under Order XVI Rule 1 CPC did not fall within the purview of sheer technicalities but it was a provision strictly in accordance with principles of natural justice.*"

8. Moreover, language of the said provision includes the word *shall* which is mandatory in its nature. However, only one exception has been given and that is same when upon showing good cause for such omission, the Court is empowered to exercise discretion by allowing such witnesses regarding whom, no list was filed but for that purpose the Court shall have to record its reasons.

9. In the case in hand, issues were framed on 14.03.2015 and as per stance of the petitioners, the counsel was changed on 04.06.2016 while the application for allowing to file list of witnesses was

filed in March, 2019 after lapse of more than three years of the change of counsel.

10. In fact Order XVI of the Civil Procedure Code and its Rule 1 provides a complete mechanism for summoning of witnesses to give evidence, produce any documents in a case pending adjudication in a Court of law. It lays down expressly about filing of list of witnesses within seven days after the issues are framed. The party failing to produce the list of witnesses shall not be permitted to call or produce the witnesses regarding whom list of witnesses had not been filed. In this respect I am fortified by the law laid down by the Hon'ble Apex Court in case titled Muhammad Anwar and others. Vs. Mst. Ilyas Begum and others {PLD 2013 SC 255} , wherein it was held as under:-

“The clear language of Rule 1(1), undisputably stipulates that the parties to a lis are required to furnish the list of witnesses, whom they propose to call either to give evidence or to produce the documents, within seven days of the framing of issues; meaning thereby that the process and the authority of the Court in terms of Order XVI(1), to call and summon the witness by a party, has been made subject to, rather conditional to the list of witnesses which a party is mandated to file in terms thereof; in other words, the power and the machinery of the Court for summoning/calling of the witnesses through the process of Court and law, as is envisaged by certain subsequent relevant rules of Order XVI, C.P.C., can only be invoked if such a list has been provided and not otherwise. From sub-Rule (2), the afore-stated intention of the legislature is fortified and augmented, as a specific prohibition has been placed, preventing a party to call the witnesses and, as per the High Court Amendment-Lahore dated 2-10-2001, even to produce witnesses other than those whose names are mentioned in the list required to be filed under sub-rule (1).

Undoubtedly, this is a mandatory provision of law as it entails serious consequences of precluding a party from calling, through aid of law (Court), or even to produce the witnesses if their names do not appear in the requisite list. However, in the same sub-rule (2), a room has been provided to a delinquent party, who either fails to file the list of witnesses at all, or omits a name of the witness(es) therein (if filed) to make up its default and delinquency and ask for the indulgence of the Court to summon and produce the witnesses(es), but only after meeting and fulfilling the command of law, [sub-Rule (2)] i.e. "after showing good cause (emphasis supplied) for the omission of the said witnesses from the list"; besides, the authority and power of the Court, in this behalf has been regulated, in that, "and if the Court grants such permission, it shall record reasons for so doing (emphasis supplied)"

11. The judgments relied upon by the learned counsel for petitioners are of no help being of different facts and not relevant to the case in hand. Petitioners failed to show any good cause for non-submission of list of witnesses within the stipulated period. Rather permission sought through application for filing of list of witnesses was filed after four years of settlement of issues and no good cause was shown for such delay.

12. In the light of what has been discussed above, instant civil revision petition has no force, therefore, same is dismissed.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Suhail