

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Civil Revision No. 509/2019
Pakistan Railways
Versus
Aamir Malik and others

Petitioner by:	Ms. Mehraj Tareen, Advocate,
Respondent No.1 by:	Barrister Khalique Zaman, Advocate,
Respondent No.2 by:	Mr. Salim Khan Tanoli, Advocate,
Date of Decision:	<u>24.08.2020.</u>

FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant civil revision petition, petitioner impugns order dated 23.10.2019 passed by the learned Civil Judge 1st Class Islamabad-West, whereby its right to file written statement was struck off.

2. Precisely, facts relevant for the disposal of instant civil revision petition are that respondent No.1 (Amir Malik) filed suit for recovery, cancellation and permanent injunction against the petitioner and respondent No.2 (Silk Bank Ltd.) wherein after procuring service, the petitioner as well as respondent No.2 (defendants) were directed to file their respective written statements. The respondent No.2 filed the written statement on 27.09.2019 but the petitioner failed to do the needful, hence, its right to file written statement was struck off vide order dated 23.10.2019, being impugned through the instant civil revision petition.

3. Learned counsel contends that the petitioner being public functionary, has to observe due process for submission of written statement that includes vetting and permission of the competent authority; that the process of filing of written statement is protected under Section 80 of the CPC; that the learned trial Court failed to adhere to the provisions of Order VIII Rule 10 CPC in its true

perspective, therefore, impugned order is liable to be set aside.

4. On the other hand, learned counsel for the respondent No. 2 expressed no objection if an opportunity is afforded to the petitioner for submission of written statement while learned counsel for the respondent No.1 resisted the petition. It is asserted that there was specific direction for submission of written statement and when the petitioner failed to submit the same despite affording ample opportunities, its right was struck off which does not call for any interference. Learned counsel placed reliance upon case laws reported as 2018 YLR 1948, 2006 CLC 566 and 2009 CLC 471.

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

6. Record reveals that the respondent No.1 filed suit on 23.05.2019. On 27.09.2019, respondent No.2 filed written statement and the case was fixed for 02.10.2019. On the said date, the learned Presiding Officer was on leave and case was fixed for 14.10.2019. On 14.10.2019 and on subsequent date of 16.10.2019, the case was adjourned on the request of the petitioner for submission of written statement. On the next date of hearing i.e. 23.10.2019, on failure of the petitioner to file written statement, its right was struck off.

7. It is manifest from the proceedings that before resorting penal action, no coercive measures like imposition of cost and a caution regarding penal action have been adopted. Admittedly, the petitioner is a public functionary and the controversy revolves around it and the respondent No.1, therefore, in such eventuality, particularly when the respondent No.2 has expressed no objection, it would be just to extend an absolute last opportunity to the petitioner for doing the needful.

8. It is settled principle, as repeatedly held by the Hon'ble Apex Court, that the cases should be decided on merits instead of technical knockout, therefore, keeping in view the peculiar facts of the instant case and the stance of petitioner that the written statement is ready for submission after vetting and approval of the concerned authority, controversy could be decided more effectively and on merits.

9. Consequently, the instant civil revision petition is allowed, impugned order dated 23.10.2019 is set aside and the petitioner is afforded an absolute last opportunity for submission of written statement within a period of fortnight from the date of receipt of this order. There shall be no order as to costs.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran