

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.434/2016
M/s Daewoo Pakistan Express Bus Services Limited
Versus
Amjad Iqbal and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	18.06.2019	Mr. Basit Waheed Wattoo, Advocate for the petitioner. Mr. Ghulam Sajjad Gopang, Advocate for respondent No.1.

Through the instant civil revision petition, the petitioner, M/s Daewoo Pakistan Express Bus Services Limited, impugns order dated 26.09.2016, passed by the Court of the learned Additional District Judge, Islamabad, whereby its appeal against the judgment and decree dated 16.03.2016, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said judgment and decree dated 16.03.2016, the learned Civil Court dismissed the petitioner's suit by invoking the provisions of Order XVII, Rule 3 C.P.C.

2. The facts essential for disposal of this petition are that petitioner instituted a suit for declaration and permanent injunction against the respondents. During the course of trial, the learned Civil Court, vide judgment dated 16.02.2015, closed the evidence of the petitioner and dismissed the suit. The said judgment was assailed in an appeal which was allowed, vide order dated 30.07.2015. The learned Appellate Court, after setting- aside the judgment and decree passed by the learned Civil Court, remanded the matter with the direction to afford one opportunity to the petitioner to produce evidence on 21.09.2015, subject to payment of

costs amounting to Rs.15,000/-. In the post-remand proceedings, the case was fixed before the learned Civil Court on 08.12.2015, whereon notices were issued to the parties. On 20.02.2016, the learned presiding officer was on leave. On 27.02.2016, case was adjourned to 16.03.2016 due to the election of the Bar Association. On 16.03.2016, a request for an adjournment was made on behalf of petitioner. The learned Trial Court declined this request and the suit was dismissed for want of evidence under Order XVII, Rule 3 C.P.C. The learned Civil Court's order dated 16.03.2016 was assailed by the petitioner in an appeal, which was dismissed, vide order dated 26.09.2016. The said appellate order has been assailed through the instant civil revision petition.

3. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant revision petition, submitted that learned Appellate Court, vide order dated 30.07.2015 had directed that the suit be fixed for hearing on 21.09.2015, but it was not fixed on the said date; that on two occasions, the matter was adjourned for reasons not attributable to the petitioner; that on 16.03.2016, the petitioner's counsel was busy before the Court at Lahore in an old case and, therefore, an application for adjournment was submitted on its behalf before the learned Civil Court; that the petitioner was ready to pay the costs imposed by the learned Appellate Court; that the learned presiding officer closed the petitioner's right of evidence under Order XVII, Rule 3 C.P.C.; that a party cannot be made to suffer due the inability of his/her counsel to appear before the Court; that the judgment dated 16.03.2016 was upheld by the learned Appellate Court without considering the case in its true

perspective; and that law favours adjudication on merits instead of technicalities. Learned counsel for the petitioner prayed for the revision petition to be allowed and for the concurrent orders passed by the learned Courts below to be set-aside. In making his submissions, learned counsel for the petitioner placed reliance on the judgments of “Shams-ud-Din Vs. Muhammad Sharif” (1996 MLD 1094 Lahore), “Pervaiz Afzal Vs. Sh. Hussan Ali and another” (1994 CLC 951) and “Mst. Kaniz Fatima Vs. Ghulam Mustafa” (1994 MLD 174).

4. On the other hand, learned counsel for respondent No.1 submitted that the concurrent orders/judgments passed by the learned Courts below do not suffer from any jurisdictional infirmity so as to warrant interference by this Court in exercise of its revisional jurisdiction. He further submitted that despite several opportunities, the petitioner had failed to produce evidence; that petitioner’s conduct amount to an abuse of the process of the law; that the petitioner had adopted delaying tactics before the learned Courts below with the intention to deprive respondent No.1 of his lawful rights; and that despite lenient view taken by the learned Appellate Court in the previous round by giving one opportunity to the petitioner to produce evidence, it neither produce evidence nor paid the costs imposed by the learned Appellate Court. Learned counsel prayed for the revision petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. The facts leading to the filing of the instant revision petition have been set out in sufficient

detail in paragraph 2 above and need not be recapitulated.

7. As mentioned above, the petitioner's suit for declaration and permanent injunction had earlier been dismissed by the learned Civil Court on 16.02.2015. The petitioner's appeal against the judgment and decree dated 16.02.2015, passed by the learned Civil Court, had been allowed by the learned Appellate Court, vide judgment dated 30.07.2015. In the said judgment, it was explicitly stated that the petitioner would be granted one opportunity to produce evidence after payment of costs amounting to Rs.15,000/-. Additionally, a direction had been given for the suit to be decided within one month.

8. In view of the above-mentioned observations/directions given by the learned Appellate Court in the judgment dated 30.07.2015, the petitioner should have been vigilant and not absented itself from the Court when the matter was taken up for hearing. True, the case was adjourned on two occasions for reasons not attributable to the petitioner, but on 16.03.2016, when the case was taken up for hearing by the learned Civil Court, the petitioner's witness was not present in the Court and an application for adjournment had been submitted on the ground that the principal counsel was busy at Lahore. Ordinarily, when a counsel busy before another Court, it is an adequate ground for an adjournment of proceedings before the Civil Court. However, in the case at hand given the specific directions/ observations made by the Appellate Court in its judgment dated 30.07.2015, the petitioner should have been vigilant by making an alternative arrangement so that its evidence was recorded on 16.03.2016. The mere fact that

the petitioner's case was earlier dismissed due to want of evidence shows the casual manner with which the petitioner was prosecuting its civil suit. Recently, the Hon'ble Supreme Court of Pakistan, in case of Rana Tanveer Khan Vs. Naseer-ud-Din (2015 SCMR 1401), held as follows:-

"2. Heard. It has been argued that only within a period of 1 month and 26 days, the evidence of the appellant was closed; besides, the appellant should have been asked by the court to at least have his statement recorded; it is further argued that no direction was issued to the appellant to produce his evidence and thus the case is covered by the judgment of this Court (supra). Before proceeding further, it may be pertinent to mention here that the case Muhammad Arshad (supra mentioned in the leave granting order) by itself is only a leave granting order and is not the enunciation of law by this Court. Be that as it may, once the case is fixed by the Court for recording the evidence of the party, it is the direction of the court to do the needful, and the party has the obligation to adduce evidence without there being any fresh direction by the court, however, where the party makes a request for adjourning the matter to a further date(s) for the purposes of adducing evidence and if it fails to do so, for such date(s), the provisions of Order XVII, Rule 3, C.P.C. can attract, especially in the circumstances when adequate opportunities on the request of the party has been availed and caution is also issued on one of such a date(s), as being the last opportunity(ies). In the present case we have seen that the appellant was cautioned on two occasions, which means that the appellant was put to notice that if he fails to adduce evidence, action shall be taken. ... In the present case, as mentioned above, it is clear from the record that the appellant had availed four opportunities to produce his evidence and in two of such orders (the last in the chain) he was cautioned that such opportunity granted to him at his request shall be the last one, but still on the day when his evidence was closed in terms of Order XVII, Rule 3, C.P.C. no reasonable ground was propounded for the purposes of failure to adduce the evidence and justification for further opportunity, therefore, notwithstanding that these opportunities granted to the appellant were only in a span of about 1 month and 26 days, yet his case squarely fell within the mischief of the provisions ibid and his evidence was rightly closed by the trial court."

9. In view of the above, I do not find any jurisdictional infirmity in the concurrent orders/judgments passed by the learned Courts below so as to warrant interference in the revisional jurisdiction of this Court. Consequently, the instant revision petition is dismissed.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan