

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A.No.140 of 2014
Mirza Muhammad Nasir
Versus
Ch. Tassaduq Hussain

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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22.09.2020

Mr. Muhammad Wajid Hussain Mughal, Advocate for the appellant
Mr. Umar Hanif Khichi, Advocate for the respondent

Through the instant regular first appeal, the appellant, Mirza Muhammad Nasir, impugns the judgment and decree dated 28.10.2014 passed by the Court of the learned Civil Judge, Islamabad, whereby the appellant's suit for "declaration, rendition of accounts, permanent injunction and recovery of Rs.99,00,000/-" was dismissed by invoking the provisions of Order XVII, Rule 3 of the Code of Civil Procedure, 1908 ("C.P.C.").

2. Learned counsel for the appellant submitted that since the Presiding Officer was on leave on 06.09.2014 and the next date of hearing i.e. 08.10.2014 was a public holiday, the learned Civil Court ought not to have penalized the appellant by closing his right to produce evidence under Order XVII, Rule 3 C.P.C. He further submitted that the appellant had not requested the learned Civil Court to fix the date for the purpose of recording of evidence. Learned counsel for the appellant prayed for the impugned judgment and decree to be set-aside. In making his submissions, learned counsel for the appellant placed reliance on the judgments reported as 2007 SCMR 1269 and PLD 1990 Lahore 180.

3. On the other hand, learned counsel for the respondent submitted that on 17.07.2014, a notice had been given to the appellant that if he did not produce evidence on the next date of hearing, the provisions of Order XVII, Rule 3 C.P.C. would be invoked. He further

submitted that since the appellant did not provide evidence on 28.10.2014, the learned Civil Court did not commit any illegality by closing the appellant's right to produce evidence and dismissing his suit.

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

5. It is an admitted position that on 17.07.2014, the learned Civil Court had given a notice to the appellant that in the event he did not produce evidence on the next date of hearing, his right to produce evidence would be closed under Order XVII, Rule 3 C.P.C. Although on 06.09.2014, the Presiding Officer was on leave and 08.10.2014 was a public holiday but the fact remains that on 28.10.2014, the appellant did not produce evidence. Since the appellant had been issued a notice by the learned Civil Court on 17.07.2014, he should have been vigilant and produce evidence on 28.10.2014. Therefore, we are of the view that the learned Civil Court did not commit any illegality by closing the appellant's right to produce evidence. Since there was no evidence on the record to support the appellant's case set out in the plaint, the learned Civil Court was justified in dismissing his suit. In holding so, we placed reliance on the law laid down by the Hon'ble Supreme Court of Pakistan in case of Rana Tanveer Khan Vs. Naseer-ud-Din (2015 SCMR 1401), wherein it was 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."

6. In view of the above, the instant appeal is dismissed with no order as to costs.

(LUBNA SALEEM PERVEZ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan: