

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

Writ Petition no. 1548 of 2021
Zahir Mehmood
versus
Tabinda Kokab and others

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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15.02.2022	Rana Rashid Javed, Advocate for the petitioner Sheikh Muhammad Suleman and Ms. Hifsa Suleman, Advocates for respondents no. 1 and 2 Mr. Afzal Tahir Advocate for respondent No.3.	
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Through this writ petition filed in April 2021, the petitioner impugned the order dated 08.04.2021 passed by the learned trial court whereby his right to produce evidence qua defendant no.2 was closed under Order 17 Rule 3 CPC. The impugned order is detailed and well-reasoned. It states that 6 opportunities were given before the impugned order was passed on the 7th hearing date. The petitioner repeatedly failed to produce his evidence.

2 The order sheets on record conform to the impugned order. The notice under Order 17 Rule 3 CPC was given to the petitioner/defendant no.2 on 23.01.2021 and was repeated on 02.02.2021, 03.03.2021, 11.03.2021, 18.03.2021, 22.03.2021 (this was a direction case) and finally the impugned order closing his evidence was passed on 08.04.2021. Some of the adjournments were indeed on the days of strikes called by the Bar, but I am afraid that doesn't qualify. When a counsel accepts a brief for consideration from his client, he takes on a fiduciary responsibility which cannot be neglected with impunity by absence from the court for the entire working day and that too, as in this case, over several hearings. While absence due to a strike may be overlooked on a one-off basis, in this case this was cited as the excuse for not leading the

evidence on 5 occasions, which is clearly excessive. The reason given for absence on one occasion was the petitioner's parents becoming sick with Covid but, as rightly pointed out by the counsel for the respondents, the petitioner lives in Mardan and it would not have been impossible for him to visit the court for a few hours to lead his evidence.

3 The Hon'ble Supreme Court held in the case titled *Moon Enterprises CNG Station Rawalpindi versus Sui Northern Gas Pipelines Limited through General Manager, Rawalpindi and another*, 2020 SCMR 300, that "...order to close the right to produce evidence must automatically follow the failure to produce evidence despite last opportunity coupled with a warning." In this case, the warning under Order 17 Rule 3 CPC was given repeatedly on 5 occasions.

4 Resultantly, I find no reason to interfere in the impugned order and this petition is therefore **dismissed**.

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

Imran