

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Civil Revision No. 96/2020.

Muhammad Hafeez

Versus

AGPR, Islamabad, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	05.03.2020.	Syed Masood Hussain, Advocate for petitioner.

Through this Civil Revision, the petitioner has assailed the judgment & decree dated 04.12.2019, passed by learned Civil Judge, 1st Class (West), Islamabad, whereby suit for declaration, permanent and mandatory injunction, filed by petitioner was dismissed due to non-production of evidence U/O XVII Rule 3 CPC and the said judgment has been maintained by the Appellate Court vide judgment & decree dated 11.02.2020.

2. Learned counsel for the petitioner *inter-alia* contends that petitioner has filed a suit for declaration, permanent and mandatory injunction against respondents, whereby letter dated 04.10.2011 issued by the office of AGPR has been challenged; that suit has been contested by the respondents, issues were framed on 10.12.2014, whereafter petitioner was not granted ample opportunity to adduce his evidence and he has been non-suited on hyper technical reasons; that both the Courts below have not appreciated the reasons in proper manner and even statement of petitioner was recorded as PW-1 and the suit was fixed for cross-examination, however, on majority of dates petitioner put appearance before the Court but cross-examination has not been conducted due to non

availability of other side, however, at last petitioner was burdened by way of impugned judgment & decree; that one last opportunity be granted to the petitioner for submission of his evidence, even subject to payment of costs.

3. Arguments heard, record perused.

4. Perusal of record reveals that petitioner has filed suit for declaration, permanent and mandatory injunction challenging the vires of letter dated 04.10.2011, issued by the office of AGPR. The suit was contested by the respondents by way of their written statement, issues were framed by the trial Court vide order dated 10.12.2014 and evidence of petitioner was recorded on 10.07.2018 through his attorney Muhammad Adeel, who appeared as PW-1, where-after number of opportunities have been granted to the petitioner's side for the purpose of cross-examination but despite best efforts of the trial Court, petitioner's witness has failed to appear, even costs of Rs.5,000/- was imposed. The petitioner was given last opportunity, absolute last opportunity and warning in terms of Order XVII Rule 3 CPC on 19.06.2019, 08.07.2019, 23.07.2019, 19.09.2019, 02.10.2019, 24.10.2019, 14.11.2019 and finally trial Court has dismissed the suit vide judgment & decree dated 04.12.2019. Although such types of concessions by means of آخری موقع، آخری قطعی موقع are considered beyond the scope of law and amounts to perpetuate the illegality, even such type of opportunities have been deprecated by the Apex Court in the recent pronouncement reported as 2020 SCMR 300 (Moon Enterpriser CNG Station, Rawalpindi Vs. SNGPL through General Manager, Rawalpindi and another)

in the following manner:-

Order to close the right to produce evidence must automatically follow failure to produce evidence despite last opportunity coupled with a warning---Supreme Court observed that the trend of granting (Akhri Mouqa) then (Qatai Akhri Mouqa) and then (Qatai Qatai Akhri Mouqa) made a mockery of the provisions of law and those responsible to interpret and implement it, and that such practice must be discontinued, forthwith.

The order sheets reflect that petitioner is negligent and intentionally did not put appearance before the Court for conclusion of the trial which speaks volume about his conduct. There is apparent contemptuous delay on the part of petitioner who could not explain his circumstances especially when he himself is a plaintiff and seeking his own rights.

5. Both the courts below have appreciated the record in a proper manner and no illegality has been observed, even Appellate Court has given detailed view regarding the conduct of petitioner, therefore, instant civil revision is misconceived and the same is hereby **dismissed in limine**.

(MOHSIN AKHTAR KAVANTH
JUDGE