

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3151/2019
Azhar Ali Abbasi
Versus
Zarak Ali and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	29.11.2019	Raja Shujaat Ali Abbasi, Advocate for the petitioner. Mr. Shahid Akbar Abbasi, Advocate for the respondents.

Through the instant writ petition, the petitioner, Azhar Ali Abbasi, impugns the judgment dated 09.07.2019 passed by the Court of the learned Additional District Judge, Islamabad, whereby respondents No.1 to 6’s revision petition against the order dated 08.03.2019 passed by the Court of the learned Senior Civil Judge, Islamabad was partly allowed. Vide the said order dated 08.03.2019, the learned Civil Court had dismissed the application filed by respondents No.1 to 7 for the submission of the list of witnesses. Vide the said judgment dated 09.07.2019, the learned revisional Court allowed the contesting parties to cross-examine the Local Commission.

2. On 04.10.2011, the petitioner and respondents No.8 and 9 had filed a suit for declaration and permanent injunction before the Court of learned Civil Judge, Islamabad. The said suit was contested by the predecessor of respondents No.1 to 6 by filing a written statement. Vide order dated 14.03.2013, the *Naib Tehsildar* was appointed as a Local Commission, who submitted his report on 23.07.2014. Out of the divergent pleadings of the contesting parties, the learned Civil Court framed the issues on 09.06.2015.

3. It may be mentioned that the objections filed by respondents No.1 to 7 against the report of the Local Commission were dismissed by the learned Civil Court vide order dated 29.05.2018.

4. On 05.11.2018, respondents No.1 to 6 filed an application for the submission of the list of witnesses, which also included the name of the Local Commission. Vide order dated 08.03.2019, the learned Civil Court dismissed the said application. Aggrieved by the said order dated 08.03.2019, respondents No.1 to 6 preferred a revision petition before the Court of the learned Additional District Judge, Islamabad. Vide judgment dated 09.07.2019, the said revision petition was partly allowed by the learned revisional Court and a direction was given to the learned Civil Court to call the Local Commission into the witness box and allow the contesting parties to cross-examine him. The said order has been assailed by the petitioner in the instant writ petition.

5. Learned counsel for the petitioner submitted that the Local Commission had submitted his report prior to the framing of the issues; and that since respondents No.1 to 6 had not submitted the list of witnesses within a period of seven days of the framing of the issues, the learned revisional Court could not direct the learned Civil Court to call the Local Commission as a witness. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

6. Learned counsel for respondents No.1 to 6 submitted that the impugned judgment dated 09.07.2019 does not suffer from any jurisdictional irregularity so as to warrant interference in the Constitutional jurisdiction of this Court.

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

8. The mere fact that respondents No.1 to 6 did not submit a list of witnesses within a period of seven days of the framing of the issues, did not prevent the learned trial Court from permitting the contesting parties from examining the Local Commission personally in open Court. The power of the Court to call the Local Commission for the purposes of cross-examination is provided in Order XXVI, Rule 10(2) C.P.C., which is reproduced herein below:-

“10(2). The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.”

9. The bare perusal of the above provision shows that the power of the learned Civil Court to call the Local Commission for the purposes of cross-examination with respect to his report or evidence taken by him is not conditional on his name appearing in the list of witnesses produced by the party, who seeks to call the Local Commission as a witness. Since I do not find the discretion exercised by the learned revisional Court in directing the learned Civil Court to call the Local Commission for the purposes of his examination to be arbitrary or unlawful, the instant petition is dismissed with no order as to costs .

Qamar Khan*

(MIANGUL HASSAN AURANGZEB)
JUDGE