

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

Civil Revision No.59 of 2020

Syed Hammad ur Rehman Shah, etc
Versus
Syed Haqqan ur Rehman Shah, etc

S.No. of order/ proceeding	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(04)	14.09.2020	Mr. Bashir Khan, Advocate for the petitioner. Mr. Mazhar Javed Advocate for respondents.

Through instant Civil Revision, the petitioner has challenged the order dated 05.11.2019, passed by the learned Civil Judge 1st Class, Islamabad- East, whereby the right of cross-examination of petitioners/defendants was struck-off.

2. Precisely, the facts of the case are that the respondents/plaintiffs filed a suit for possession through partition alongwith permanent injunction, mesne profit, which was contested by the petitioners/defendants by filling written statement and out of the pleading of the parties, the learned trial Court framed issues and respondents/ plaintiffs were directed to adduce their evidence. Many opportunities were given to the petitioners to conduct cross-examination on the plaintiffs' witnesses, but the petitioners failed to do so.

3. Learned counsel for the petitioners/ defendants has contended that on

05.11.2019, the learned counsel for the petitioners appeared before the learned trial Court at about 03:10 p.m., but much before the learned Court passed the impugned order; that valuable rights of the petitioners are involved; cross-examination is right of the petitioners; that the impugned order dated 05.11.2019 is against law and dictums of superior Courts. Next contended that the learned trial Court has not followed the provisions of law. Lastly, urged for acceptance of the instant petition.

4. On the other hand, learned counsel for respondents/ plaintiffs has opposed the contention of learned counsel for the petitioners/defendants and submitted that petition is not maintainable. Next contended that the petitioners/defendants were afforded several opportunities but they failed to appear and cross-examine the remaining PW; that the petitioners/ defendants had to file writ petition rather revision petition. Lastly, prayed for dismissal of this petition.

5. Arguments heard, record perused.

6. Perusal of the record reveals that on 05.11.2019, the case was fixed for cross-examination on PWs. Case was called for the first time at 08:40 a.m., and associates of both the parties appeared and as per their request, case was fixed for 11:00 a.m. At 11:00 a.m., no one appeared on behalf of the petitioners/defendants and the matter was

fixed for 2:00 PM. After a long time, learned counsel for the petitioners/defendants failed to appear before the Court for cross-examination and due to his non-appearance, right of cross-examination of petitioners/ defendants was struck-off. Order dated 05.11.2019, mentions that *“at 03:10 pm, learned counsel for the defendant appears. He was informed about the Court orders and he requested to mark his presence.”*

7. Cross-examination is a great legal engine invented to unearth the truth from the statement of a witness. Opportunity to cross-examination contemplated by the law, must be real, fair and reasonable. Cross-examination is not the empty formality, but a valuable right and best method for ascertaining the truth. The object behind granting a right of cross-examination can only be achieved after affording a fair opportunity to an opposite party, likely to be adversely affected, being on the receiving end in the shape of examination-in-chief from statement so recorded by the court, in all the matters. To adjudge the veracity, credibility and trustworthiness/truthfulness of the witness enables the Court, for relying upon, while deciding the matter before it. The grant of a fair opportunity for cross-examining a witness by the adversary has its genesis and roots in the principle of *audi alteram partem*, duly codified in the shape of Article 10-A of our Constitution.

8. It has been observed that on

05.11.2019, case was fixed for cross-examination on PWs but learned counsel for the petitioners/ defendants failed to appear, as such, right of cross-examination was struck off despite the fact that associate of the learned counsel for the petitioners attended the Court in the first hours of the day but the learned Trial Court had preferred to close the right of the petitioners to cross-examine the witnesses. In this way, a try to knock out the petitioners purely on technical ground has been made by the learned Trial Court, which was not the mandate of the law and procedure. Law always favours the decision on merits and condemns the technicalities. Reliance in this respect is placed upon "Haji Lal Shah v. Mst. Nooran through L.Rs and others" (2012 CLC 1503), "Syed Tahir Hussain Mehmood and others Vs. Agha Syed Liaqat Ali and others" (2014 SCMR 637) and "Kathiawar Cooperative Housing Society Ltd. v. Macca Masjid Trust and others" (2009 SCMR 574) wherein it was held as under:-

"In our opinion, the matter should be decided on merits and not dismissed on technicalities, which even otherwise could not be substantiated. So also it is trite law that rules of procedure have been made to foster the cause of justice and not to hamper it and unless any party is prejudiced by any violation of the same, they should not stand in the way of dispensation of justice. These are the reasons for our short order passed earlier whereby the appeal was allowed and the matter remanded to the Appellate Court to be heard on merits and decided within three months."

9. After the promulgation of Amendment Ordinance No.XXII of 2019 in Code of Civil Procedure, 1908, Section 115 of CPC has been substituted and according to newly substituted Section, no revision has been provided against the interlocutory order passed by a Civil Judge or Senior Civil Judge as the case may be, therefore, the instant revision petition is converted into a writ petition.

10. Keeping in view the above facts and circumstances, this Civil Revision is **accepted**. The petitioners/ defendants are granted an opportunity to cross-examine the PWs, subject to cost of Rs.10,000/- to be paid by the petitioners/defendants before the Learned Trial Court to the other side. Learned Trial Court is directed to conclude the case preferably within a period of two months after receipt of the certified copy of this order.

~~(GHULAM AZAM QAMBRANI)~~
JUDGE

S.Akhtar