

*Form No.HCJD/C-121*  
**ORDER SHEET**  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

Civil Revision No. 274/2019

**M/S YALDRAM SECURITY SERVICES (PVT.) LTD.**

Versus

**M/S FECTO CEMENT LIMITED AND ANOTHER.**

Sr.No. of order/ Proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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16.03.2020

Mr. Asim Riaz Awan, Advocates for Petitioner.  
Raja Muhammad Akhtar Satti, Advocate for the respondents.

This Civil Revision has been filed by the petitioner challenging the order dated 15.06.2019 passed by the learned Additional District Judge, West-Islamabad, whereby, the plaintiff's right to cross examine the witnesses was closed.

2. Learned counsel for the petitioner/plaintiff submitted that a suit for recovery of Rs. 20,22,670/- was filed by the petitioner/plaintiff against the respondents. The trial was commenced, however, the right of the plaintiff to cross examine the witnesses was closed on the pretext that the plaintiff has availed more than 12 opportunities since, 20.10.2018, spreading over the period of almost 08 months. Learned counsel further submitted that DW-1 could not be cross-examined due to non-availability of the learned counsel for the plaintiff (present petitioner). Learned counsel vehemently opposed the findings recorded vide impugned order and referred the date wise proceedings of the trial Court. Summary of which is as under:-

20.02.2018    *Adjourned on the request of the defendant;*

**27.10.2018** Plaintiff not well, witnesses of defendants not present;

**10.11.2018** Junior attendant adjournment sought by plaintiff for being busy before Hon'ble Peshawar High Court.

**17.11.2018** Adjournment sought by defendant.

**08.12.2018.** Adjournment sought by plaintiff.

**22.12.2018** Adjourned due to lawyers strike.

**05.01.2019** Adjourned due to lawyers strike.

**26.01.2019** Adjourned to the security reasons of judges.

**16.02.2019** Adjournment sought by defendant.

**02.03.2019** Adjourned due to learned Judge on leave.

**16.03.2019** Adjournment sought by defendant.

**26.03.2019** Adjourned due to learned Judge on leave.

**13.04.2019** Adjournment sought by plaintiff as due to surgery.

**04.05.2019** Case transferred.

**04.05.2019** Learned Judge on leave.

**25.05.2019** Learned Judge on leave.

**15.06.2019** side closed as proxy counsel attended."

Learned counsel submitted that out of 17 hearings only on 05 dates case was adjourned on his request and that too on genuine reasons. Thus, the learned Judge has erroneously observed that delay is on the part of the counsel for the plaintiff. Learned counsel further submitted that as learned counsel for the defendant has not completed the cross examination thus he could not examine the witness in peace meal and due to this reasons he was waiting for the learned counsel for the defendant to conclude the cross examination on the witness. Learned counsel relied on following observations made by the Hon'ble Lahore High Court in the cases titled as "Faiz Ullah vs. Ghulam Rasool" reported as (2006 YLR 1206):-

"6. Perusal of the above said order would show that the case was not adjourned on the request of the party alone who has been penalized. For taking penal action under Order XVII, rule 3, C.P.C., the case on preceding date should have been adjourned on the request of the party being penalized. Were adjournment was in routine and was not at the behest or on request

*of a party, then penal action under Order XVII, rule 3, C.P.C. could not be taken. Reliance has been placed on Syed Tasleem Ahmed Shah v. Sajawal Khan and others (1985 SCMR 585) and Sheikh Khurshid Mehmod Alam v. Mirza Hashum Baig and another (2004 YLR 818). It is also the fact that the witnesses were present on certain dates and summoned witnesses could not be examined. Mere pendency of the case for more than four years is no ground to invoke the penal provision under Order XVII, rule 3, C.P.C. The case of the parties cannot be decided by trapping them into the technicalities of the procedure.”.*

as well as “Himat Khan vs. Abdur Rehman Khan (2005 MLD 74):-

*“ The fact remains that neither, on 12-4-2001 nor 28-4-2001, the respondent requested for the adjournment of the suits and, they were adjourned for recording the evidence of the respondent in routine. As the learned Civil Judge was on leave, on, 12-4-2001, therefore, the suits were not adjourned at the instance of the respondent and no such request was even noted in the order-sheet. Similarly on 28-4-2001, the learned Civil Judge was busy in departmental course, therefore, the cases were adjourned to 16-C-2001, in routine, without recording the request of the adjournment by the respondent. On the succeeding date, i.e. on 16-6-2001, the order, closing respondent's right to produce evidence, was passed. As noted above, on previous two dates of hearing, the cases were not adjourned for recording the evidence of the respondent at respondent's request, therefore, closure of the evidence of the respondent, on succeeding date, purportedly in exercise of powers under Order XVII, rule 3, C.P.C. was not warranted in law.”.*

3. Learned counsel for the respondents opposed the arguments of the learned counsel for the petitioner/plaintiff and stated that the adjournments sought by the learned counsel for petitioner/plaintiff were not supported by any documentary evidence thus the petitioner/plaintiff's right of cross examination was validly closed. Learned counsel supported the

impugned order dated 15.06.2019, as being well reasoned, just and lawful.

4. I have heard the learned counsel for the parties and have also perused the relevant record including the impugned order.

5. Perusal of the order sheets referred by the learned counsel for the petitioner/plaintiff shows that the case was adjourned 05 times on the request of petitioner/plaintiff and 4 times on the request of the respondents and on 08 dates it was adjourned due to various other reasons, however, not on the request of the petitioner/plaintiff. It is also observed that the petitioner/plaintiff's right of cross-examination was closed on 15.06.2019 without any notice or warning while observing vide the impugned finding that petitioner/plaintiff has availed more than 12 opportunities since 20.10.2018. Thus, said finding of the learned court below is negated from the examination of order sheets and it is apparent that either the proceedings were delayed on account of requests for adjournment made by both the sides on various dates or due to various other reasons by the Court.

6. For the foregoing reasons, while relying on the case law cited by the learned counsel for the petitioner/plaintiff and in order to meet the ends of justice, impugned order dated 15.06.2019, is set aside and the case is remanded back for recording of evidence while providing opportunity of cross examination to both the sides. The parties are directed to proceed with the matter without seeking unnecessary adjournments, whereas, the

learned Trial Court is directed to conclude the trial within a period of one month from the date of receipt of this order.

Instant Civil Revision Petition is allowed in the above terms.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**