

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No. 1530 of 2020

Abasin Ulayar, etc.

Vs

Pakistan Telecommunication Company Limited and another.

Petitioners : Shah Mamoon Baig, Advocate.

**Respondent's : Mr. Ali Nawaz Kharal and Rana Rashid Javed,
Advocates.**

Date of hearing : 21.08.2020.

LUBNA SALEEM PERVEZ J. Through present petition, the petitioners have assailed Order dated 09.03.2020, passed by Civil Judge 1st Class, West-Islamabad, whereby, request for summoning of witness at serial No. 2 of the list of witnesses submitted on behalf of defendants (present petitioner) was not exceeded to.

2. Facts of the case are that the respondent/PTCL filed suit against the petitioners for recovery of Rs. 1,100,000/- with profit at the prevailing bank rate on the ground that petitioners after completing the training sponsored by the PTCL have resigned from the jobs in violation of the surety bond executed on 16.03.2012, wherein the petitioners were bound to serve the PTCL for minimum period of one year after completing the training. The petitioners contested the suit by filing written statement and after framing of issues list of witness was submitted by the parties. The petitioners submitted its list of witnesses after the prescribed period of seven days under Order XVI Rule 1 along with application seeking specifically summoning of witnesses at serial No. 2 & 3 along with record. The list of witnesses as well as the application was contested by the PTCL and the learned Trial Judge, vide order dated 09.03.2020, allowed application to the extent of summoning of witness at serial No. 3, whereas, the request to the extent of witness at serial No. 2, since, has already recorded his statement for the PTCL, was

declined. The petitioners being aggrieved have challenged the order in the present writ petition.

3. Learned counsel for the petitioners submitted that application for delayed submission of list of witnesses was allowed by the learned Court, vide order dated 30.03.2017. He submitted that along with the said application list of witnesses was also attached which included plaintiff as a witness along with record, as such, the learned trial Court, vide order dated 30.03.2017, has also approved the witnesses for producing evidence in favour of defendants. However, vide impugned order dated 09.03.2020, has unjustifiably declined to call plaintiff as a witness along with record wherefrom certain facts regarding service, training and resignation could be proved. He further submitted that the learned trial Court has deprived the petitioners from fair trial and due process of law envisaged under Article 10-A of the Constitution of Pakistan, 1973. He submitted that the impugned order is illegal and unlawful and prayed for its modification to the extent of allowing summoning witnesses at serial No. 02 of the list. Learned counsel relied on case re: *WAPDA vs. Qazi Muhammad Irshan* (2006 MLD 1532).

4. Learned counsel for Respondent No. 1, vehemently contested the submissions of the petitioners and submitted that the petitioners are seeking re-summoning of the witness who has already appeared along with record as witness of the plaintiff/PTCL and recorded his statement as PW-1 on 08.12.2019, and has also been cross examined by the petitioners, as such, he cannot be summoned and recalled again. At the most the petitioners can request the Court to produce the record by following the prescribed procedure. He further submitted that petitioners are seeking writ of certiorari and has to show the illegality and infirmity in the order which the learned counsel has unable to point out. He submitted that the petition is frivolous and not maintainable. Reliance was placed on *Muhammad Amir Qasmi vs. Ch. Muhammad AzharShaheen* (PLD 1985 Lahore 234), *Rakhmat Jan vs. Gul-e-Nargis* (PLD 1989 Lahore 506), *Muhammad Abid vs.*

Mst. NasreenYousaf (2002 CLC 655) and Bank of Punjab vs. Muhammad Pervez Malik (2002 CLC 595).

5. Arguments heard. Record perused.

6. The petitioners are aggrieved with the rejection of calling witness No.2, as his witness arrayed in the list of witnesses submitted with his application dated 19.01.2017. Record reveals that the PTCL who has filed a suit for recovery against the petitioners has produced the witness as PW-1 along with record who has recorded his statement on oath for PTCL. The present petitioners (the defendants in the suit) wanted PW-1 to appear along with same record and depose on oath as their witness. The contention of the petitioners to produce PW-1 is untenable as to how a person who has been a witness, produced evidence and recorded statement for one party can re-appear as a witness to record statement on oath for opponent party. The petitioners' desire to re-summon the same witness who has also been cross-examined by the learned counsel for the petitioners without any valid reason is barred by law. The re-summoning and re-calling the witness is a discretion of Court but on valid and lawful grounds. Learned counsel for the petitioners also relied on a case reported as *WAPDA vs. Qazi Muhammad Irshan (2006 MLD 1532)* in support of his argument which in fact is of no help to them as in that case the Record Keeper produced as witness has shown ignorance about relevant facts about the available record, therefore, the Hon'ble Court allowed to call Assistant Superintendent instead of Record Keeper as witness. In the present case the petitioner neither has raised objection regarding any deficiency of the record produced in evidence nor there is any allegation of production of fake documents rather PW-1 has been properly cross examined at length by the learned counsel for the petitioners.

7. I have also gone through the provision of Order XVI CPC relied upon by learned counsel for the petitioners and unable to find any provision which could provide for re-summoning of same witness to give evidence for other side also.

Statement of PW-1 as recorded shows that all the record necessary for the purposes of the case has been produced and the petitioners has cross-examined the plaintiff's witness who appeared as PW-1. I am in agreement with the argument of learned counsel for the Respondent No. 1 that once a witness has recorded his evidence and thereafter has been cross-examined cannot be re-summoned for production of evidence.

8. I have also gone through Order XVIII Rule 17 of CPC, whereby, the Court may recall and examine the witnesses. The provision of order XVI Rule 17 of CPC has been dealt with by the Hon'ble Lahore High Court in case titled as *Rakhmat Jan vs. Gul-e-Nargis and others (PLD 1989 Lahore 506)* and it has been observed therein that the powers of the Court under Rule 17 are discretionary in nature and ought to be exercised with care and caution. The relevant portion is also reproduced as under:-

"A close reading of this rule indicates that the right to put questions at any stage of a civil suit or re-call any witness for the said purpose is given to the Court only. As the rule itself shows, the Court can put questions to the witnesses re-called. Ordinarily no cross-examination is allowed upon the answers to the questions put by the Judge without his leave. The right to act under this rule is not restricted to the Court acting suomotu but may be exercised at, the instance of a party to the suit or proceedings. The powers of the Court to act under the above rule 17 though widely expressed yet being discretionary in nature ought to be exercised with care and circumspection."

9. Learned counsel for respondent No. 1 has also relied on the judgment of Hon'ble Lahore Court titled as *Muhammad Amir Qasmi vs. Ch. Muhammad Azhar Shaheen (PLD 1985 Lahore 234)*. In this case, the person appeared as plaintiff's witness was also named as defence witness to adduce evidence, however, the Hon'ble Court held that person after deposing as a witness for the respondent could not be examined as witness for the petitioner. The Hon'ble Court with regard to provision of Order XVIII Rule 17 of CPC has observed as under:-

"8. In exceptional cases, under Order XVIII, rule 17 of the Code of Civil Procedure, the Court can re-call a witness who has been examined by any party. It is discretionary with the Court to do so, suomotu? at the request of any party. After such witness is brought before the Court, it can put questions to him and thereafter the parties will be entitled, to cross-

examine him. The defendant may, therefore, if so advised, invoke the provisions of Order XVIII. rule 17 of the Code of Civil Procedure, to bring back before the Court a witness who has been examined by the plaintiff but there is no law whereunder he can, as of right, examine such witness as a defence witness”.

10. In the light of the above, the impugned order dated 09.03.2020 has been perused carefully and no illegality or legal infirmity could be found in the same, therefore, and I am also of the considered opinion that the petitioners (defendants in the suit) could not produce plaintiff's witness as defence witness who has been a witness and recorded evidence on oath for plaintiff. The instant petition is held to be devoid of any merit, hence, dismissed accordingly.

(LUBNĀ SALEEM PERVEZ)
JUDGE