

ORDER SHEET.

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

Writ Petition No. 1054/2020

Shaikh Shamim Iqbal etc

versus

Civil Judge (West), Islamabad etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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08.04.2020

Raja Asim Saeed Abbasi and Ch. Zaheer Ahmed, Advocates for petitioners.

Through this writ petition, the petitioners have assailed the order dated 17.02.2020, passed by learned Civil Judge Class-1st (West), Islamabad, whereby, their application for production of additional rebuttal evidence was partly allowed.

2. Learned counsel for petitioners *inter-alia* contends that the petitioners are defendants in the civil suit filed by respondents No. 2 & 3 for recovery of gold ornaments, original degree, original official documents and other house hold items and the said suit was contested by way of written statements by the present petitioners/defendants, whereafter issues were framed vide order dated 13.07.2016, however, evidence has been recorded and during the cross examination of the petitioners' witnesses a question has been put regarding financial status of the petitioners and in order to justify their financial status, the petitioners have filed a separate application to produce additional rebuttal evidence on the basis of tax record and different properties and enlisted the following documents in the application:-

(i) Regular Income Certificate dated 04.03.1993 amounting to Rs.50,000/- dated 30.08.1994 amounting to Rs.50,000/- alongwith receipt dated 02.01.1994 amounting to Rs.1,50,000/- dated 27.10.1994 amounting to Rs.3,00,000/- dated 12.12.1994 amounting to Rs.2,50,000/- dated 18.04.1994 amounting to Rs.1,00,000/- dated 10.11.1994 amounting to Rs.3,00,000/-, dated 08.02.1995 amounting to Rs.1,00,000/-.

- (ii) *Plot 10 Marla situated at Mouza Misrial Rawalpindi reference Registrar No.2760, Bahi No.01, Jild No.110 dated 14.04.2005.*
- (iii) *Plot 05 Marla situation at Chamanabad Rawalpindi dated 21.04.2006.*
- (iv) *Fard-e-Bia dated 17.09.2005 Jamabandi 2001-2002.*
- (v) *Sale agreement dated 05.03.2007 measuring 05 Marla, Mouza Misrial ref.1480/2007.*
- (vi) *Copy of registrar No. 1967, Bahi No.1 Jild No. 130 dated 19.04.2007 measuring 05 marla Mouza Misrial, Rawalpindi.*
- (vii) *Affidavit for purchase of vehicle No. LRK-5598, Mehran Stamp Paper No. 1434/2010.*
- (viii) *Original Fard ref. Intiqal No. 20925, measuring 03 marla Mouza Misrial Rawalpindi.*
- (ix) *Registry 02 Marla Mouza Jhangi Syedan, Islamabad registered No.6993, Bahi No. 01, Jild No. 4894, pages 142-143 dated 06.08.2018, Islamabad.*
- (x) *Documents for sale of Suzuki Bolan LED-2074, Model 2009.*
- (xi) *Documents ownership Suzuki Mehran No. IDL-297, dated 2019.*
- (xii) *Income Tax receipt FBR dated 30.09.2019.*

3. It has further been contended that the learned Trial Court after hearing the parties, partly allowed the application and permitted the petitioners to produce documents mentioned at S. No. 9, 11 and 12, which are registered deed of land measuring 02 marlas, Mouza Jhangi Syedan, Islamabad, Registration of ownership of Suzuki Mehran No.IDL-297 and Income Tax receipt of FBR dated 30.09.2019, whereas, rest of the documents were not allowed on the ground that no sufficient cause has been shown by the petitioners for non-filing of the documents for last four years.

4. Learned counsel for petitioners has been confronted regarding the main issue as to whether the financial status of petitioners has been disputed by the plaintiffs in the civil suit and as such this aspect has ever been raised through a separate plea in terms of Order VI Rule 1 CPC, whereby, he candidly conceded that no such plea was ever taken by the plaintiffs/respondents No. 2 & 3 nor the same was raised as a disputed question of fact.

5. Learned counsel for petitioners has further been confronted to go through the evidence of the plaintiffs

PW-1/Sheikh Nadeem Iqbal/respondent No.2, whereby, he read the entire evidence of PW-1 and conceded that PW-1/respondent No.2 has never raised the question of financial status of the petitioner in the affirmative evidence recorded by PW-1.

6. In view of above position, the question of rebuttal evidence could only be considered in the light of concept referred in Articles 117 & 118 of Qanun-e-Shahadat Order, 1984, whereby, onus of proof lies upon the person who desires any Court to give a judgment as to any legal right or liability dependent upon the existence of facts which he asserts, must prove that such facts exists, failing which, the consequences appear, whereas, in this case the learned Trial Court has framed no such issue regarding financial status of the petitioners nor the same is subject matter of the case, even otherwise, the order of examination in terms of Article 133 of Qanun-e-Shahadat Order, 1984 imposes the restriction that the examination-in-chief and the cross-examination must relate to the relevant facts. The evidence of rebuttal could only be produced if the plaintiff narrates any particular fact in affirmative evidence and the same fact is under adjudication, but in this case no such relevancy has been pointed out, although the learned Trial Court permitted the petitioners for production of few documents, which are necessary and relevant, as per the learned Trial Court, but the petitioners have failed to prove relevancy of other documents, even the application filed by the petitioners for submission of those documents does not disclose the relevancy in para-2, which is as under: -

"یہ کہ گزشتہ تاریخ میں جرح کے دوران سائل کے بے روزگار ہونے کے حوالے سے ایک مخصوص سوال کیا گیا جس کو جواب میں سائل نے انکار کرتے ہوئے اپنے باروزگار ہونے کا ثبوت عدالت میں پیش کرنا چاہا تو مدعا علیہ نے اس پر اعتراض کیا"

The above referred reasons if considered in the light of order passed by the learned Trial Court, which clearly establishes that income tax record of the FBR dated 30.09.2019 answers the entire proposition, therefore, at this stage the learned counsel for petitioners have failed to justify the jurisdictional defect and illegality in the impugned order, which is a pre-requisite for exercise of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

7. The recent amendment in Civil Procedure Code through Amendment Act, 2020, which has been made with primary object to deal with the cases justly and fairly, to avoid expenses and save the time of both the Courts as well as the litigants in letter and spirit do not permit the petitioners to challenge the interlocutory orders through writ petitions, resultantly, the instant writ petition is misconceived, therefore, the same stands ***dismissed in limine***.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khurram