

Form No: HCJD/C

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Civil Revision No. 440 of 2019

Dr. Samira Shabbir and another
Versus

Dr. Ghulam Shabbir Baloch and another.

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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**13.11.2019. Mr. Ajam Naz Malik, Advocate for
petitioner.**

The instant Civil Revision is directed against order dated 07.10.2019, whereby the application filed by the petitioners for placing on record the list of documents, list of reliance and list of witnesses was dismissed.

2. The facts, in brief, are that the respondents filed a suit against the petitioners, which was contested by the latter by filing a written statement on 13.05.2013. The written statement was not accompanied by the list of witnesses as well as documents, list of reliance of the documents; subsequently, the issues were framed and list of witnesses was required to be filed under Order XVI Rule 1 CPC which

also the petitioners did not do so. After conclusion of the evidence of respondents, the petitioners filed an application for placing on record the documents to be filed, list of reliance of documents as well as list of witnesses which was dismissed vide the impugned order dated 07.10.2019 by the learned Trial Court.

3. Learned counsel for the Petitioner, *inter-alia*, contended that failure to file list of witnesses within seven days of framing of issues is not fatal and permission can be granted under Order XVI Rule 2 CPC; likewise, it was contended that even, if the list of documents is neither appended nor reliance list is filed that also does not has any adverse effect on the petitioners rights. Reliance was placed on cases reported as **"Karachi Metropolitan Corporation, Karachi vs. Raheel Ghayas" (PLD 2002 SC 446), "Muhammad Nawaz vs. Additional District Judge, Sargodha" (1999 CLC 1142), "Umar Hayat vs. Additional District Judge" (2004 SCMR 1367) and "Wapda through Chairman vs. Qazi Muhammad Irshad" (2006 MLD 1532).**

4. Arguments advance by the learned counsel for the petitioner have been heard and the documents placed on record examined with his able assistance.

5. Under Order XIII Rule 1 CPC the parties or their pleaders are required to produce on the first hearing of the suit all documentary evidence of every description in their possession or power on which they intend to rely and which have not already been filed in the Court. Under Order XIII Rule 2 CPC, no document shall be received in evidence which has not been filed in accordance with Order XIII Rule 1 CPC unless good cause is shown to the satisfaction of the court for the non production thereof and the Court receiving any such evidence shall record the reasons for doing so; likewise, under Order XVI Rule 1 CPC, after framing of issues within seven days, the parties are to file their list of witnesses which they intend to call either to give evidence or to produce documents under Order XIII Rule 1(2), a party shall not be permitted to call or produce witnesses other than those contained in the said list, except with the permission of the Court and after showing good cause for the omission

of the said witness from the list; and if the Court grants such permission, it shall record reasons for so doing. The Hon'ble Supreme Court of Pakistan in case reported as **"Muhammad Anwar vs. Mst. Ilyas Begum" (PLD 2013 SC 255)** explained the term of good cause in the context of under Order XVI Rule 1 (2) CPC. The august apex Court observed as follows:-

"7. Be that as it may, before proceeding with the matter further in the context of answering the propositions herein involved and for the purposes of interpretation of sub-Rules (1) and (2) of Order XVI, C.P.C. and for elucidation of the said question, I would also like to resort to another expression i.e. "sufficient cause" which has been used by the legislature in the provisions of Civil Procedure Code, specially in Order IX, Rule 9 and Order IX, Rule 13 as against the word "good cause" used in Rule 7 of the said Order (IX of C.P.C.); besides Order XLI, Rule 19 thereof. Rules 9 and 13 ibid pertains to setting aside of an ex parte proceedings or the decree on the behest of defendant(s) of a case who must establish a 'sufficient cause' while under Rule 7 supra, the plaintiff whose suit has been dismissed for non-prosecution, should show a good cause for seeking its restoration. The distinction between the two expressions shall be made in the succeeding part of the judgment. Anyhow with reference to the proposition(s) in hand, XVI(2) can validly be bifurcated into two parts, firstly, it has been made incumbent upon a party, rather a duty has been cast upon the delinquent party to show 'good cause' for omission to file the list of witnesses or the name of a particular witness and the second part is meant to regulate the power, authority and the discretion of the Court in relation to the grant of permission

8. For the purpose of comprehending the first part, it shall be relevant to ascertain the true meaning of the expression 'good cause' which according to Black's Law Dictionary Eighth Edition means "A legally sufficient reason. Good cause is often the burden placed on a litigant (usu. By court rule or order) to show why a request should be granted or an action excused.--Also termed good cause shown; just cause; lawful cause; sufficient cause". Whereas, according to the said dictionary "sufficient cause" bears the same meaning as "good cause" and thus both the words can be held to be considerably analogue and interchangeable expressions, yet as per the precedent law, 'good cause' has been construed in wider terms than 'sufficient cause'^[1]. Though no hard and fast, and absolute criteria can be set forth, as benchmark, to test, if a case of omission to file the list of witnesses or a name in such list is on account of 'good cause', as it depends upon the facts of each case, however, the party in default has to show a legally sufficient reason, why a request should be granted or the inaction/omission should be excused, in other words, the Judicial conscious of the Court should be satisfied with justifiable reasons. In any case, a party in default cannot, as a matter of right or as a matter of course without assigning or establishing any good cause for the omission, ask for the calling/summoning or even to produce the witness(es) only on account of a lame excuse/reason and a bald assertion that, it shall be in the interest of justice and/or it shall facilitate the Court in deciding the matter".

6. In view of the above judgment, the good cause has to be substantial and duly elaborated. The concept of good cause explained with context to Order XVI CPC shall also apply to Order XIII CPC. The reasons attributed for the failure to file the documents and the list of witnesses as mentioned in the impugned order are not

denied by the learned counsel for the petitioner; inadvertence and indisposition of the counsel for the petitioners holding the brief is being claimed. The referred reasons do not qualify to be good cause. The learned Trial Court has not committed any jurisdictional error warranting interference in the instant Civil Revision. The case law relied upon the learned counsel for the petitioner is not applicable in the facts and circumstances inasmuch as all the judgments are prior to ***PLD 2013 SC 255 ibid.***

7. In view of the above, the instant petition is without merit and is accordingly **dismissed in *limine*.**

**(AAMER FAROOQ)
JUDGE**

****Shakeel Afzal****