

JUDGMENT SHEET.

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

Civil Revision No. 291/2018.

Inam-ul-Haq

Versus

Capital Development Authority, Islamabad, etc.

Petitioner by: Mr. Abdul Rashid Awan, Advocate.

Respondents by: Mr. Muhammad Nazir Jawad, Advocate.

Date of Decision: 21.05.2019.

MOHSIN AKHTAR KAYANI, J:- Through this Civil Revision, the petitioner has assailed the order dated 21.07.2018, passed by learned Civil Judge, 1st Class (East), Islamabad, whereby application U/O VII Rule 18 CPC read with Section 151 CPC, filed by petitioner was dismissed.

2. Learned counsel for the petitioner contends that petitioner filed an application U/O VII Rule 18 CPC whereby respondents/CDA extended lease period of different plots without putting them on auction and by adopting discriminatory treatment and as such the petitioner has filed the application with reference to five documents issued by the CDA in favour of different individuals; that learned trial Court has not appreciated the law on the subject rather the Court has explained the legal status of the documents claimed to be called for the purpose of adjudication of the matter; that relevancy of documents could not be seen without calling those record and documents in the Court and impugned order passed by the trial Court is contrary to the principles referred in Order VII Rule 18 CPC.

3. Conversely, learned counsel for the CDA/respondents contends that documents which have been claimed to be called in the Court have no

relationship with the petitioner's case rather they relate to the plots which have been auctioned by the CDA and have different parameters than petitioner's case.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner filed an application U/O VII Rule 18 CPC in the pending civil suit with the simple prayer to produce evidence/five different letters issued by CDA authorities but the said request has been turned down through impugned order.

6. In order to resolve the controversy, it is necessary to reproduce Order VII Rule 18 CPC, which is as under:-

Inadmissibility of document not produced when plaint filed. (1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced, or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

7. The above referred Order VII Rule 18 CPC provides a solution for production of those documents which could not be entered into the list and annexed to the plaint at the time of filing of the suit and those documents could not be placed on record at the time of evidence except with the leave of the Court.

8. While considering the above legal provision, I have gone through the impugned order, whereby learned trial Court has rendered different reasons in detail, however, those reasons relate to the contents of status of the documents viz. a viz. case of the petitioner in the trial Court. Such approach of the trial Court is contrary to the requirement of Order VII Rule 18 CPC as the effects which have been discussed by the trial Court in the impugned order could have

been discussed after grant of leave to the petitioner while allowing his application for production of the documents.

9. The other mandatory provision which is necessary to be applied in every suit is Order VII Rule 14 CPC, whereby plaintiff shall produce all those documents in his possession or power in the Court alongwith the plaint, however, those documents which were not in his possession but requires in support of his claim those documents shall be entered in the list in terms of Order VII Rule 14(2) CPC. The documents which could not be listed by the plaintiff, could not be called by the trial Court during the proceedings of the trial except with leave of the Court.

10. The provision of Order VII Rule 18 CPC shall also be considered relevant if read alongwith Order XIII Rule 2 CPC, whereby no documentary evidence in possession or power of any party which should have been but not has been produced in accordance with the requirement of Order XIII Rule 1 CPC shall be received at any subsequent stage of the proceedings unless "good cause" is shown to the satisfaction of the Court for non-production thereof.

11. While considering the entire procedural provisions discussed above the main aim and wisdom of these procedural provisions is to extend help to the parties to lay down their complete case before the trial Court prior to the final verdict. The provision of Order VII Rule 14(2) CPC is mandatory as the word "shall" has been used, therefore, its effect has been discussed with reference to Order VII Rule 18 CPC read with Order XIII Rule 3 CPC in which the document could not be placed on record unless leave has been granted with sufficient reasons or good reasons to be placed on record. As such the application referred by the petitioner is silent qua the reasons rather the question of discrimination has been discussed, therefore, I have gone through the reported case 2015 YLR 1059 (Samiullah and 9 others Vs. Aqal Mand and 37 others) and is of the view

that petitioner has not rendered reasons for non-submission of those documents but the application filed by him reflects that he came to know about the decisions of similar cases of different individuals who were treated differently by the CDA, which gives rise to favourable situation and in order to strengthen his case petitioner has filed application U/O VII Rule 18 CPC.

12. Even otherwise, the document referred in the application before the trial Court is of public record and not a single document is a private document, hence, there is no chance of tampering with evidence by the petitioner or any other party. The good cause/sufficient cause is visible from the record, even otherwise, the suit is at evidence stage and if the complete claim of the petitioner has not been brought on record, he might suffer irreparable loss, therefore, while exercising the jurisdiction vested in this Court in terms of Section 115 CPC it is a fit case to exercise the jurisdiction in favour of the petitioner, hence instant petition is allowed and impugned order 21.07.2018 is hereby set aside. Resultantly, application U/O VII Rule 18 CPC is allowed as prayed. However, trial Court is at liberty to decide the fate of those documents at the time of final judgment or prior to the said date if so required.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid