

**JUDGMENT SHEET.**

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

**Civil Revision No. 03 of 2020**

**Nisar Ahmed Afzal**

**Versus**

**Shaukat Ullah Khan Bangash**

**Petitioners By** : Sardar Shabbir Hussain, Advocate.

**Respondents By** : Mr. Ali Nawaz Kharal,  
Advocate.

**Date of Decision** : 19.02.2020.

**LUBNA SALEEM PERVEZ, J.** - Through instant Civil Revision Petition, Petitioner has assailed order dated 23.11.2019, passed by learned Additional District Judge (West), Islamabad, whereby, ~~his~~ application filed under Sections 148 & 151 CPC, for extension of time for filing of list of witnesses on behalf of present Respondent/ Plaintiff under Order XVI Rule 1 & 2 CPC, has been allowed.

2. The facts in brief are that Respondent filed civil suit No. 227 of 2011 on 04.10.2011, before this Court for recovery of Rs. 17,70,00,000/- along with interest and liquidated damages against Petitioner which was decreed by this Court, vide Judgment dated 09.05.2014, and the application for leave to appear and defend filed by the Petitioner was dismissed. Petitioner assailed the said judgment through Intra Court Appeal No. 377/2014, which was accepted vide order dated 07.03.2017 and while accepting the Petitioner's application for leave to appear and defend the suit, matter was remanded back to the Learned Single Judge for decision. However, later on in view of the amendment regarding enhancement of pecuniary jurisdiction of this Court, made in the Islamabad High Court Act, 2010, suit was transmitted to the District Court.

3. After commencement of proceedings before Additional District Judge-X, Islamabad, in the suit afresh, the issues were framed on 04.05.2018 and parties were directed to file list of witnesses within seven days in terms of Rule 1 of Order XVI CPC. Learned Counsel for Respondent filed application u/s 151 read with 148 on 08.12.2018 for extension of time for submission of list of witnesses on the ground that the same was filed by him on 10.05.2018 but was later on unavailable in the court's file. The Learned Judge allowed the application, vide order dated 23.11.2019, observing that *"the application under consideration stands allowed in the larger interest of justice and to avoid miscarriage of justice subject to cost in the sum of Rs. 5,000/-"* and adjourned the hearing to 27.11.2019. Hence, present revision petition challenging order dated 23.11.2019.

4. Learned Counsel for the Petitioner submitted that the application u/s 151 read with 148 CPC was filed on 08.12.2018, eight months after the framing of issues on 04.05.2018, whereas, list of witnesses was ordered to be filed within seven days of the framing of issue. Learned Counsel further submitted that under Order XVI Rule I CPC and since the word "shall" has been used in the provision, it is mandatory that list of witnesses is required to be filed within seven days. Learned Counsel further submitted that no sufficient cause has been shown by the Respondent/Plaintiff for extension of time for submission of list of witnesses after prescribed period, whereas, copy of the alleged list of witnesses received by Ahlmad was also not retained by the Respondent/plaintiff. Learned Counsel placed reliance on the case titled **Muhammad Anwar & others versus Mst Ilyas Begum & others** reported as **(PLD 2013SC 255)** and submitted that impugned order dated 23.11.2019 is illegal, passed in a mechanical way without any lawful reasoning, hence, liable to be set-aside.

5. The arguments of the Learned Counsel for Petitioner have been vigorously opposed by the Learned Counsel for Respondent while contending that list of witnesses was filed within the stipulated period of seven days from the framing of issues. Learned Counsel

referred order sheet dated 10.09.2018 showing attendance of Counsel of both the parties as well as attendance of two witnesses for the Plaintiff (present respondent) and argued that presence of witnesses is only possible when the compliance of Order XVI Rule I CPC is made and contended that Learned Counsel for Petitioner was also present on 10.09.2019, however, he has made no objection on the appearance of the witnesses. Learned Counsel further submitted that when it came to Respondent's knowledge that the list of witnesses was not found in the court's file although filed on 10.05.2019 he filed application u/s 151 read with Section 148 CPC requesting extension of time to submit the list of same witnesses. Learned Counsel argued that Rule I of Order XVI was substituted, vide Law Reforms Ordinance, 1972, whereby seven days was provided for submission of list of witnesses, so that no party would be taken to surprise by the witness to be produced during the proceedings, as it was before this amendment, when no time limit was provided. Learned Counsel contended that sub-rule 2 of Order XVI permits the party to furnish the list of witnesses with the leave of the Court on showing good cause. It was further argued that recording of evidence has not yet been commenced, therefore, no prejudice has been caused to the Petitioner by allowing the application to the Respondent vide order dated 23.11.2019. Learned Counsel contended that even otherwise there is a room provided to a delinquent party who either fails to file the list of witnesses at all or omits a name of the witness in case he has filed the said list to make up its default and delinquency and asked for the indulgence of the Court to summon and produce the witnesses, but only after showing good cause. Learned Counsel in support of his contentions referred the case law reported as **Muhammad Anwar & others versus Mst. Ilyas Begum & others (PLD 2013 SC 255), Hakim Habibul Haq Vs Aziz Gul (2013 SCMR 200), Mst. Hajra Begum through Legal Heirs Vs. Mst. Badar-un-Nissa and others (PLD 2013 Sindh 417), Mst. Safeer Begum and others Vs. Additional District Judge and others (PLD 2011 Lahore 14), Umar Hayat Vs. Additional District Judge (2004 SCMR 1367), Ghulam Nabi Vs. Additional District Judge, Rajanpur and others (2004 CLC 650), Naeem Akhtar Vs. Additional District Judge and others**

**(2005 MLD 1713), J.H. Abraham Vs. Aziz Aslam (1986 SCMR 1382), Australasia Bank Ltd. VS Mangora Textile Industries, Swat (1981 SCMR 150), Mian Muhammad Hafiz Etc. Vs. Aziz Ahmad Etc. (1980 SCMR 557), and Ghulam Murtaza Vs. Muhammad Ilyas and 3 others (PLD 1980 Lahore 495).**

6. Arguments heard, record perused.

7. Present case in view of its facts and circumstances; involves interpretation of Order XVI Rule 1 of CPC which reads as under.

**ORDER XVI**

**1. SUMMONING AND ATTENDANCE OF WITNESSES-**

(1) Not later than seven days after the settlement of issues, the parties shall present in Court a certificate of readiness to produce evidence alongwith a list of witnesses whom they propose to call either to give evidence or to produce documents.

(2) A party shall not be permitted to call 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 permission, it shall record reasons for so doing.

(3) On application to the Court or such officer as it appoints in this behalf, the parties may obtain summons for persons whose attendance is required in Court: Provided that no summons shall be issued for service on a person under rule 8 unless an application in that behalf is made not later than fourteen days prior to the date fixed for the hearing of the suit and the necessary expenses for the summoning of such person are deposited.”.

8. While submitting the arguments regarding interpretation of the above provision, Learned Counsel appearing on behalf of both the parties have relied on the same judgment of Hon’ble Supreme Court reported as **Muhammad Anwar & others versus Mst. Ilyas Begum & others (PLD 2013 SC 255)**, wherein the Apex Court has interpreted sub-rule (1) & (2) of Rule 1 of Order XVI. The relevant part on which the learned Counsel are relying is reproduced is below:-

Part of para relied upon by Counsel for the Petitioner:

“The clear language of Rule on 1(1), undisputedly stipulates that the parties to a lis are required to furnish the list of witnesses, whom they propose to call either to give evidence or to produce the documents, within seven days of the framing of issues; meaning thereby that the process and the authority of the Court in terms of Order XVI (1), to call and summon the witness which by a party, has been made subject to, rather conditional to the list of witnesses which the party is mandated to file in terms

*thereof; in other words, the power and the machinery of the court for summoning /calling of the witnesses through the process of the Court and law, as is envisaged by a certain subsequent relevant rules of Order XVI, C.P.C., can only be invoked if such a list has been provided and not otherwise. From sub-rule (2), the afore stated intention of the legislature is fortified and augmented, as the a specific prohibition has been placed, preventing a party to call the witness and, as per High Court Amendment-Lahore dated 2-10-2001, even to produce witnesses other than those whose names are mentioned in the list required to be filed under sub-rule (1). Undoubtedly, this is a mandatory provision of law as it entails serious consequences of precluding a party from calling, through aid of law (Court), or even to produce the witnesses if their names do not appear in the requisite list.*

Part of para relied upon by Counsel for the Petitioner:

*“However, in the same sub-rule (2), a room has been provided to a delinquent party, who either fails to file the list of witnesses at all or omits a name of the witness(es) therein (if failed) to make up its default and delinquency and ask for the indulgence of the Court to summon and produce the witness(es), but only after meeting and fulfilling the command of law, [sub-rule (2)] i.e. “after showing good cause (emphasis supplied) for the omission of the said witnesses from the list”; besides, the authority and the power of the Court, in this behalf has been regulated, in that “and if the Court grants such permission, it shall record reasons for doing(emphasis supplied)”*

9. In view of the above interpretation of Hon’ble Apex Court, as per sub-rule (1) of Rule 1, Order XVI, CPC submission of list of witnesses within seven days from the date of framing of issues is a mandatory requirement. The legislature, however, in terms of sub-rule (2) of Rule 1, Order XVI, CPC has also granted discretion to the Court to permit the delinquent party, on showing good cause, to file the list of witnesses, who either has failed to file the list or omitted to list any witness, thus has provided a chance to meet the ends of justice and to provide substantial justice. It has been held in a judgment passed by a learned Single Bench of High Court of Sindh, Karachi, in case titled **Syed Farukh Mazhar Vs SGS Headquarters** reported as **(PLD 2108 Khi 327)** that provisions of Civil Procedure Code 1908 are to be construed liberally as far as possible and technical objections should not be allowed to defeat substantial justice and

further held that Rules framed in the Civil Procedure Code are for advancement of justice and should not as far as possible be allowed, to operate so as to defeat ends of justice.

**10.** Record shows that case was remanded back, vide order dated 07.03.2017 in ICA No. 377/2014, by this Hon'ble Court for trial by observing that *"in order to justify the presumption, the plaintiff is under obligation to submit the original cheque and dishonor slips before the trial Court as a piece of evidence, which is otherwise considered as a primary evidence and without placing these documents on record the decree cannot be passed"*. Therefore, the Learned Additional District Judge while exercising discretion under Order XVI, Rule 1(2) CPC read with section 148 CPC allowed the application, considering the facts and circumstances of the case in order to provide fair trial, in the larger interest and to avoid miscarriage of justice.

**11.** For what has been discussed above, I am of the considered view that impugned judgment dated 23.11.2019, passed by the Learned Additional District Judge, Islamabad, does not suffer from any illegality or infirmity calling for any interference, hence, instant revision petition is accordingly dismissed.

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