

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 207/2019

Kalim-ud-Din Ahmad

Versus

Nadeem-ud-Din Khan.

PETITIONER BY: Mr. Tahir Ehsan Malik, Advocate

RESPONDENT BY: Mr. Raz Ali Shah, Advocate

DATE OF DECISION: 01.10.2019.

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MOHSIN AKHTAR KAYANI, J. Through this civil revision, the petitioner has assailed the order dated 02.05.2019, passed by learned Civil Judge 1st Class (West), Islamabad, whereby suit filed by the petitioner has been fixed for 12.06.2019 for recording evidence of the respondent.

2. Learned counsel for the petitioner contends that the petitioner filed a civil suit against the respondent for recovery of Rs. 80,00,000/- alongwith profit; that the respondent failed to file his written statement, therefore, his right to file written statement was struck off vide order dated 02.04.2018, however, the respondent filed civil revision against the said order which was dismissed vide order dated 23.05.2018; that despite the fact that the respondent has not filed his written statement as his right was struck off, learned Trial Court vide impugned order dated 02.05.2019 adjourned the suit to 12.06.2019 for recording of evidence of the respondent; that learned Trial Court should fix the case for final arguments; that the impugned order has been passed against the law.

3. Conversely, learned counsel for the respondent contends that right of the respondent to file written statement has already been closed by the learned Trial Court vide order dated 02.04.2018, same was upheld by this

Court in C.R No. 135/2018 vide order dated 23.05.2018 and as such he was permitted to lead his evidence in the trial and the order dated 02.05.2019 has been passed in accordance with law. He has relied upon **2002 SCMR 1954 (Wak Orient Power and Light Limited Vs. Westinghouse Electric Corporation and others)**.

4. Arguments heard, record perused.

5. From the perusal of record, it has been observed that right to file written statement of the respondent has already been closed vide order dated 02.04.2018 and same was maintained by this Court in C.R No. 135/2018 vide order dated 23.05.2018 and as such the respondent has not filed written statement, however, after the closing of evidence of the petitioner on 02.05.2019, the learned Trial Court has fixed the case for recording of evidence of the respondent. The impugned order dated 02.05.2019 is hereby reproduced as under:-

جرح بر گواہ PW-1 بجانب کونسل مدعا علیہ قلمبند شد۔

بیان کونسل مدعی بابت ختم کرنے شہادت مدعی قلمبند شد۔

اس طرح شہادت مدعی ختم شد۔ ملتوی ہو کر برائے شہادت مدعا علیہ بتقرر 12-06-2019 کو پیش ہووے۔

6. The above referred order reflects that respondent was permitted to produce his evidence on the next date of hearing and as such the order has been confronted to the learned counsel for the respondent as to how and under what circumstances, respondent was permitted to lead evidence, especially when he has failed to submit written statement. The main question before this Court is as to whether any person is permitted to lead his evidence, when his right to defence has already been closed under Order 8 Rule 10 CPC, therefore, the Apex Court in the reported judgment as **2002 SCMR 1954 (Wak Orient Power and Light Limited Vs. Westinghouse Electric Corporation and others)** has held that:-

“he does not loose the right of participation in the subsequent proceedings and can still defend himself by filing counter affidavit”

7. Although in this case, no such process has been adopted nor the respondent has filed an affidavit of fact, therefore, learned Trial Court has fixed the case for recording of evidence of the respondent without jurisdiction as there is no procedural provision provided in the law, which allow the respondent to lead his evidence without submission of written statement or his plea before learned Trial Court, even otherwise if such practice is allowed to be carried out, then the parties will lead any kind of evidence without taking defence plea, which itself is negation of the Civil Procedure Code, 1908 as well as trial mechanism provided in the said law coupled with the fact that when there is no written defence available in the suit filed on behalf of respondent, then in such eventuality, what defence would be supported and strengthened by any evidence allowed to be lead by the respondent.

8. While considering the above background, the impugned order dated 02.05.2019, passed by learned Civil Judge, 1st Class (West), Islamabad is without jurisdiction and against the law and facts, therefore, instant civil revision is **Allowed**, the order dated 02.05.2019 is hereby **Set-Aside** to the extent of production of evidence by the respondent, therefore, learned Trial Court is directed to fix the case for final arguments and respondent is not allowed to lead any evidence.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN