

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

W.P No. 743 of 2022

MUHAMMAD IKRAM.

VS

CAPITAL DEVELOPMENT AUTHORITY (CDA), 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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05.10.2022.	Raja Nusrat Mehmood, Advocate for Petitioner. Mr. Khurram Mehmood Qureshi, Advocate for Respondent (CDA).
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Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner seeks setting aside of the Order dated 10.02.2022 (**“Impugned Order”**) passed by the learned Trial Court, whereby Petitioner/Plaintiff’s right to conduct cross examination was closed.

2. The learned counsel for the Petitioner submits that the Petitioner filed a suit challenging the cancellation of his plot by the Respondent/Capital Development Authority (CDA). He submitted that the DW submitted his examination-in-chief on 31.01.2022; that on the next date, the witness was not present; that on the date after that there was a strike; that thereafter on 08.02.2022 the learned counsel for the Petitioner was not available; that on 10.02.2022 the Petitioner/Plaintiff’s attorney himself appeared before the learned Trial Court and requested for an adjournment as the learned counsel was not available due to his preoccupation before the Honorable Lahore High Court, Rawalpindi Bench, Rawalpindi but the leaned Trial Court did not grant the request and

passed the Impugned Order while striking off his right of cross-examination.

3. The learned counsel for the CDA submitted that the Petitioner/Plaintiff's plot was cancelled by CDA in the year 1998, whereas, the suit was filed by the Petitioner on 06.11.2011 and as such the matter is an old one in which directions for early decision were given by this Court despite which the matter has been lingering on due to the delaying tactics employed on behalf of the Petitioner/Plaintiff. He referred to orders dated 31.01.2022 whereby the Court has reminded the Petitioner/Plaintiff to pay the cost imposed vide order dated 21.12.2021. According to the learned counsel for the CDA this cost was imposed upon the Petitioner/Plaintiff at the time of recording of his evidence due to delaying tactics. However, not only did the Petitioner/Plaintiff failed to pay such cost but he continued delaying the matter thereafter, as such, further cost of Rs. 5,000/- was imposed upon him vide order dated 08.02.2022 and a last opportunity was given to proceed with cross-examination on 10.02.2022. On the said date the Petitioner/Plaintiff once again requested for an adjournment on the pretext of being heavily engaged in his other cases before the Honorable Lahore High Court, Rawalpindi Bench, Rawalpindi but the attached cause list according to the learned counsel reflected only one case before the learned Single Bench of the Lahore High Court, Rawalpindi Bench, Rawalpindi. He further pointed out that the matter was adjourned till 2 pm at which time the

Petitioner/Plaintiff failed to appear yet again and submitted that the matter has been taken up by Division Bench but no supporting cause list was provided, as such, the Impugned Order was passed whereby his right to conduct cross-examination of the defendant's witness (DW) was closed. The learned counsel also pointed out that costs imposed by various orders of the learned Trial Court have not been paid by the petitioner/Plaintiff till date in flagrant violation of such orders which shows the conduct of the Petitioner that does not deserve leniency.

4. In rebuttal, learned counsel for the Petitioner/Plaintiff stated that the Impugned Order also records that he was present at 3:10 p.m but by such time the DW had already left the Court, as such, he contends that his nonappearance was unavoidable as appearance before the superior Court is necessary.

5. I have heard the learned counsel for the parties and have also perused the available record including the order sheets of the learned Trial Court.

6. Although the Petitioner/Plaintiff has not filed the complete order sheet, what can be gathered from the available record is that a cost was imposed upon the Petitioner/Plaintiff vide order dated 21.12.2021 which is admittedly unpaid to date. Furthermore, it has been correctly recorded in the Impugned Order that three opportunities were awarded to the Petitioner/Plaintiff to conduct cross-examination

i.e., on completion of the examination-in-chief on 31.01.2022; thereafter on 08.02.2022 when last chance was given with imposition of further cost; and lastly on 10.02.2022, on which date the Impugned Order was passed and his right to conduct cross- examination was closed. Not only is that sufficient time in my opinion, but the fact that despite multiple opportunities to pay costs imposed by the learned Trial Court the costs remain unpaid to date without any plausible explanation.

7. Be that as it may, Courts always favor deciding matters on merits rather than technical knockdown. In the instant case, I am willing to extend benefit of the doubt to the Petitioner/Plaintiff as his learned counsel attached the cause list of the Lahore High Court, Rawalpindi Bench, Rawalpindi showing that he was busy before the superior Court. However, the failure of the Petitioner/Plaintiff to pay costs despite multiple opportunities cannot be lightly ignored.

8. In view of the above, the instant petition is **allowed** subject to payment of cost by the Petitioner/Plaintiff in the amount of Rs. 50,000/- (which includes cost already imposed by the learned Trial Court) to be deposited with the learned Trial Court within one week from the date hereof. In case of compliance, the Petitioner may be allowed to conduct cross-examination of CDA's witness on the next date which shall be fixed by the learned Trial Court but in no event shall be later than one week from the date of

deposit of the aforementioned cost on which date no adjournment shall be entertained for any reason, whatsoever. In the event of Petitioner/Appellant's failure to comply with the foregoing condition and/or seeking any adjournment before the learned Trial Court on the date fixed for the cross-examination as per above direction, this petition shall be deemed be dismissed with all consequences to follow.

(SAMAN RAFAT IMTIAZ)
JUDGE

ADNAN