

FORM NO. HCJD/C
JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

REGULAR FIRST APPEAL NO.01 OF 2013

PAKISTAN TELECOMMUNICATION COMPANY LTD (PTCL) & OTHER
VERSUS.

MST. NAIMA AYUB & OTHERS

Date of Decision: 13-03-2013

Appellant By: Mian Abdul Razzaq, Advocate.

Respondents 1 & 2 By: Fida Hussain Mirza, Advocate..

ORDER

MUHAMMAD ANWAR KHAN KASI, CJ.:

This appeal is preferred against the order and decree dated 17.12.2012, passed by Mr. Muhammad Naveed Khan, learned Civil Judge Islamabad, whereby suit of the plaintiff (Appellant herein) for declaration, cancellation of documents, mandatory and permanent injunction was dismissed by closing the evidence of plaintiffs under Order XVII Rule 3 CPC.

2- In support of this appeal, learned counsel inter alia contends that non-suiting of the appellant for his failure to produce evidence on an adjourned date is not legal; that the impugned order and decree is against law and facts; that the decree always follows the judgment but in the present suit, no judgment has been passed and no issue has been discussed and that no sufficient opportunity was granted to the appellant for producing evidence. In order to support his arguments, learned counsel relied upon the case laws reported as 2007 SCMR 1269, 2009 CLC 188, 1990 CLC 1122 and 2007 MLD 1072.

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3- Learned counsel for respondent on the other hand, refuted the above submissions by stating that the appellant was provided ample opportunities to adduce his evidence but he failed and ultimately suit was dismissed for want of evidence. The order impugned, keeping in view the circumstances of the case, is justified and does not call for any interference.

4- With able assistance of learned counsel, for the parties, we have gone through the impugned order and it will be imperative to reproduce the same hereunder for ready reference and better understanding;

"Today the suit is fixed for evidence of the plaintiff but the plaintiff has failed to produce his evidence despite availing as many as five opportunities. It is an oldest direction case pertaining to the year 2007 falling within the category of oldest cases which are directed to be proceeded on daily basis. Hence, the right of plaintiff to produce evidence is closed under Order 17 Rule 3 CPC and the suit of the plaintiff is hereby dismissed for want of evidence. Parties are left to bear their own costs. Decree sheet be prepared accordingly. File be consigned to the record room after its due completion."

5- It appears that while closing the evidence of the plaintiff, the learned Trial Court straightaway proceeded to dismiss the suit vide impugned order without pronouncing judgment and giving issue wise findings, which is not permissible under law. If it is assumed that Order XVII Rule 3 CPC is applicable then the learned Trial Court is required to pronounce the judgment and had no jurisdiction to dismiss the suit after closing the evidence. It is admitted position that not a single issue was discussed and decided. In *Muhammad Aslam's case (2008 SCMR 942)*, the Honourable Supreme Court while elaborating the phrase, "proceed to decide the suit forthwith", Words "proceed to decide the suit forthwith" do not mean "to decide the suit

forthwith" or "dismiss the suit forthwith", Court may proceed with the suit notwithstanding either party failed to produce evidence, meaning thereby that in case of default to do a specific act by any party to the suit, next step required to be taken in the suit should be taken. Word "forthwith" means without any further adjournment yet it cannot be equated with the words "at once pronounce the judgment".

6- The learned Trial court despite non-production of witnesses by the plaintiff, instead of dismissing the suit forthwith, should have asked the plaintiff to come in witness box. There is no mention in the impugned order that on the crucial date i.e 17.12.2012, nobody turned up to represent the plaintiff/PTCL, therefore, the learned Trial Court before dismissing the suit, should have invoked the provisions of Order XVII Rule 2 CPC by calling the plaintiff for the purpose of recording of statement.

7- For what has been discussed above, this appeal is allowed and in consequence thereof, impugned order/judgment and decree dated 17.12.2012 is set-aside and the case is remanded to the learned Trial Court with the direction to proceed with it in the light of observations made hereinabove. The parties are left to bear their own costs.

(CHIEF JUSTICE)

(Shaukat Aziz Siddiqui)
JUDGE

Mirza Amer Baig.

Approved for reporting