

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 266/2019.

Habib ur Rehman Kiyani

Versus

Brig (Rtd) Tipu Sultan, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	03.07.2019.	Syed Haider Ali, Advocate for petitioner.

Through this Civil Revision, the petitioner has assailed the order dated 01.06.2019 and order dated 18.06.2019, passed by learned trial Court, whereby petitioner's right to produce evidence was closed and his application in terms of order XVI Rule 1 & 2 CPC for production of witnesses has also been rejected.

2. Learned counsel for the petitioner *inter-alia* contends that this Court has earlier passed order dated 27.03.2019 in C.R No.401/2018 titled Habib ur Rehman Kiyani Vs. Brig (Rtd) Tipu Sultan, etc., whereby petitioner was given one opportunity to produce all of his evidence subject to payment of costs to the tune of Rs.50,000/- and in compliance of the said order petitioner has paid Rs.50,000/- to the respondents and submitted application with the prayer that his marginal witnesses of the agreement are not appearing despite his best efforts, therefore, marginal witnesses of agreement as well as record keeper of CDA be summoned; that trial Court without considering the law on the subject dismissed the application and closed down the right to

produce evidence in terms of Order XVII Rule 3 CPC, which is in violation of proposition raised by the petitioner before the trial Court and contrary to legal norms.

3. Arguments heard, record perused.

4. Perusal of record reveals that petitioner has filed an application in terms of Order XVI Rule 1 & 2 CPC seeking permission for production of two marginal witnesses of the agreement as well as record keeper of the CDA but his application was dismissed as he was only allowed to produce his evidence on one date of hearing in compliance of direction passed by this Court in C.R No.401/2019, vide order dated 27.03.2019. In order to resolve the controversy the relevant extract of the order and direction is hereby reproduced as under:-

*In view of above, while considering the entire background of the case and factor of pendency vis-a-vis the rights of parties, especially when issues were framed 07.05.2016 and evidence of two witnesses has been recorded, therefore, it will be harsh to close the right of petitioner to produce further evidence as it will create a technical knockout to his claim, and as such, it is trite law that courts have to maintain balance while applying penal provision of Order XVII Rule 3 CPC, even otherwise, it is also settled that lis should be decided on merits, rather on technicalities. Evidently, the learned trial Court erred in applying judicial mind and passed impugned order dated 29.11.2018, therefore, the instant civil revision is **ALLOWED** and impugned order dated 29.11.2018 is hereby **SET-ASIDE**. However, petitioner is directed to produce all of his evidence on one date of hearing subject to payment*

of cost to the tune of Rs.50,000/- to respondents, failing which the learned Trial Court shall apply the penal provision after giving due notice in terms of Order XVII Rule 3 CPC. The learned Trial Court seized with the matter is also directed to conclude the trial by 31.12.2019.

5. The above referred direction clearly spells out that a specific one date of hearing subject to payment of costs of Rs.50,000/- for production of all the evidence of the petitioner was granted, even the direction was also given to the trial Court to conclude the trial on or before 31.12.2019 as the subject matter of civil suit regarding Agro Scheme plot is under dispute since 2009, whereas issues were framed on 07.05.2016 and despite clear warning by the trial Court on number of occasions, petitioner has failed to produce his evidence as a result whereof his right was closed and this Court set aside the previous order dated 29.11.2018.

6. The petitioner has filed another application to the trial Court with contention that his marginal witnesses refused to appear before the Court, however, it is the responsibility of the petitioner to arrange his private witnesses and only one opportunity was granted to the petitioner but no substantial cause has been placed on record through which it could be assumed that petitioner is handicapped to produce the witnesses. Even otherwise, the order of trial Court clearly spells out that the trial Court has only complied with the direction of this Court and permitted the petitioner to

produce his evidence in which he failed. The matter in dispute was pending since 2012-13, therefore, the conduct of the petitioner is not above board, who is not entitled for any discretionary relief. Even he has failed to point out any legal defect in the order of the trial Court. Hence, instant petition is misconceived and the same is hereby *dismissed in limine*.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid