

JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

C.R No.339/2019.

Malik Muhammad Riaz etc. VS Muhammad Hakeem Khan

Petitioners by: Mian Muhammad Omer Riaz, Advocate.

Respondent by: Mr. Muhammad Faisal Chaudhry, Advocate.

Date of Decision: 26.09.2019.

MOHSIN AKHTAR KAYANI, J:- Through the instant civil revision, the petitioners have assailed the order dated 14.06.2019, passed by learned Civil Judge 1st Class (East), Islamabad, whereby right of the petitioners to cross-examine the witnesses has been closed in suit titled *Muhammad Hakeem Khan vs. Usman Butt etc*, filed by the respondent.

2. Learned counsel for the petitioners contends that the petitioners pointed out to the learned Trial Court that another suit between the same parties on similar subject matter is pending adjudication before the same Court and unless both the suits are consolidated, the matter cannot be decided; that learned Trial Court refused to consolidate the suits rather passed the impugned order against the petitioners in violation of settled principles of law.

4. Conversely, learned counsel for the respondent contends that the petitioners were given ample opportunities on previous dates of hearings, even on 12.06.2019 counsel for the petitioners acknowledged that he will cross-examine the witnesses on the next date of hearing; that the petitioners were directed to cross-examine the witnesses as one of the witnesses has to come from abroad as reflected from the order sheet dated 12.06.2019; that on 14.06.2019, the witnesses were not cross-examined, therefore, the impugned order was passed.

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that the respondent filed suit against the petitioners titled *Muhammad Hakeem Khan vs. Usman Butt etc*, in which written statement was filed and issues were framed on 07.09.2018, where-after the suit is fixed for evidence.

C.R No.339/2019.

Examination in chief of P.W.1/Muhammad Hakeem and P.Ws.2/Altaf Hussain was recorded on 04.10.2018 but they were not cross-examined and the petitioners were given numbers of opportunities, however, on 12.06.2019, learned counsel for the petitioners agreed to cross-examine the witnesses in any circumstances even in case of strike of bar but on 14.06.2019, learned counsel for the petitioners failed to cross-examine the witnesses, which resulted into closing of right of the petitioners to cross-examine the witnesses.

7. The minute study of entire matter reveals that the petitioners informed learned Trial Court that another suit for recovery has been filed by them against the respondent, which is also pending before the same Court on same date and propriety demands that both the matters may be consolidated to avoid conflicting judgment but despite that learned Trial Court closed down right of the petitioners to cross-examine the witnesses.

8. Besides the above referred legal position, I have gone through the civil suit titled *Malik Muhammad Riaz vs. Sabahat Tallat etc.* for recovery of Rs.1,23,26,435/-, however, the request for consolidation of suits was not adhered to and at the same time, right of cross-examination was closed although the propriety demands that where two suits pertaining to same subject matter between same parties are pending adjudication, it is incumbent upon the Trial Court to make a specific order for consolidation of both the suits and to frame consolidated issues and thereafter to record evidence of the parties in support of their respective claims and in the absence of consolidation the evidence of the parties has to be recorded separately in both the suits and evidence in one case cannot be placed and considered in another suit for passing a judgment. Reliance is placed upon **2010 MLD 1230 [Peshawar] (Abdur Rahim vs. Muhammad Tahir Khan and others).**

9. In present case, learned Trial Court has not considered rule of propriety, which is meant to settle common question and to avoid rigor of technicalities. Although fair opportunities have been granted to the petitioners for cross-examination but the technical issue raised by the petitioners leans in their favour. Learned counsel for the respondent has failed to satisfy this Court as to how and under what circumstances, the impugned order can be maintained.

10. Therefore, considering the entire background, I hold that learned Trial Court wrongly exercised its jurisdiction, therefore, instant revision petition is **allowed**.

C.R No.339/2019.

Impugned order dated 14.06.2019 is hereby set aside. Learned Trial Court is directed to consolidate both the suits in order to avoid conflicting judgment. The conduct of the petitioners seems through the file of learned Trial Court, which exposes delay on their part, therefore, the petitioners shall pay costs of Rs.30,000/- to the respondent within 30 days before the learned Trial Court on the date fixed before it. Learned Trial Court seized with the matter shall conclude both the cases on or before 31.01.2020 under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

R Anjum