

3. Conversely, the respondent in person contends that his counsel is busy before Apex Court, therefore, he will argue his case himself. The respondent further contends that he is facing different litigation before different Courts, which are lingering on due to conduct of the petitioner, who is not interested for adjudication of the matter on merits; that Trial Court granted numerous opportunities to the petitioner for filing of written statement but the petitioner could not file his written

statement and as result whereof impugned order dated 16.02.2019 was passed, wherein his right to file written statement has rightly been closed.

4. I have heard learned counsel for the petitioner and the respondent and perused the record.

5. Perusal of the record reveals that the petitioner has assailed the order dated 16.02.2019, whereby right of the petitioner to file his written statement has been closed. The respondent filed a suit for recovery of Rs.1,62,00,000/- as damages for malicious prosecution by the petitioner on 21.01.2008. The petitioner being defendant was reported to be living abroad, who could not be served through normal mode, therefore, substituted service by way of publication in Daily *Khabrain* was ordered vide order dated 03.06.2009 and after change in pecuniary jurisdiction in the law, the matter was transferred to Civil Court from this Court and it was taken up from the stage of publication and ex-parte proceedings were initiated on 12.04.2013, ex-parte evidence was recorded and ex-parte judgment & decree was passed on 02.05.2013 by learned Civil Court. However, the application was filed for setting aside ex-parte judgment & decree in terms of section 12(2) CPC on 13.12.2016, which was allowed vide order dated 13.12.2018 subject to payment of cost of Rs.5,000/- resultantly ex-parte judgment & decree was set aside. The matter was adjourned to 21.01.2019 when learned Trial Court was not performing its duties due to security issues inside the Courts premises, the matter was adjourned to 28.01.2019 but due to insecurity of Judges, the judicial work was not carried out by learned Trial Court and again the matter was adjourned to 07.02.2019, on which date application was filed by the proxy counsel appearing on behalf of the petitioner contending therein that learned counsel has proceeded abroad, whereby last warning was issued and the matter was adjourned to 16.02.2019, when the written statement could not be filed and impugned order was passed mainly on the ground that statutory time period for filing of written statement has already been expired.

6. The above referred background reflects that on five (05) dates of hearing, learned Trial Court has not performed its normal functions due to strike of bar as

lawyers have constructed their chambers in front of the Courts and Judges were unable to perform their duties due to law and order situation created due to illegal construction.

7. Moreover, learned counsel for the petitioner was out of country w.e.f 13.01.2019 to 14.02.2019 as confirmed through general adjournment granted by this Court, which has been placed on record by the petitioner side. This aspect shows that learned counsel representing the petitioner was not aware that last warning has been issued by learned Trial Court and the statutory period has already been elapsed for filing of written statement, as the Courts were not performing their normal functions, the litigants as well as lawyers were not allowed to appear before the Courts, which proves to be extra ordinary circumstances/situation, which were beyond the control of the petitioner to file his written statement within statutory period. It is settled law that such kind of circumstances have been discussed and considered as exceptional circumstances when Court must exercise its discretion in order to protect rights of the individuals. Reliance is placed upon 1990 CLC 1078 [Karachi] (Mrs. Nahid and 2 others vs. Mrs. Nafisa Khatoon and another). Similarly, this Court is also bound by the principles, where rights of the individual have been given protection upon technicalities to meet the ends of justice. Reliance is placed upon PLD 1975 SC 678 (Manager, Jammu & Kashmir, State Property in Pakistan vs. Khuda Yar). Even otherwise, technicalities should not be hindrance in the way of justice. Reliance is placed upon PLD 1963 SC 382 (Imtiaz Ahmed vs. Ghulam Ali).

8. While relying upon the above judgment, the facts highlighted by the petitioner side discloses that he has been precluded from filing his written statement due to circumstances beyond his control, even the Courts were not working due to strike as well of security issues. The petitioner could not be burdened for any delay in filing written statement especially when his learned counsel was out of the country, who returned to Pakistan on 15.02.2019, whereas right of the petitioner to file his written statement was closed on 16.02.2019, therefore, in such type of situation, High Court has to exercise its jurisdiction in terms of section 115 CPC

where certain margin has to be extended in favour of the petitioner, especially when entire *lis* is for damages.

9. Keeping in view the above position, learned trial Court has not considered all questions, grounds and difficulties faced by the petitioner while passing the impugned order, rather failed to exercise the jurisdiction vested in it, hence, it is the duty of this Court to extend complete protection to the rights of petitioner by exercising powers U/S 115 CPC in the given circumstances.

10. In view of above discussion, instant civil revision petition is allowed subject to payment of cost of Rs.10,000/-, impugned order dated 16.02.2019 is set aside. Learned Trial Court is directed to afford one opportunity to the petitioner for filing of his written statement, failing which, learned Trial Court shall proceed in accordance with law.

(MOHSIN AKHTAR KAYANI)
JUDGE

R Anjam