

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

Civil Revision No. 152/2019.

Aurangzeb

Versus

Muhammad Rafiq, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	23.04.2019.	Rana Shoukat Hayat, Advocate for petitioner.

Through this Civil Revision, the petitioner has assailed the order dated 03.04.2019, passed by learned Additional District Judge (West), Islamabad, whereby appeal U/O XLIII Rule 1 CPC filed by respondents was allowed and status-quo order granted in favour of petitioner in terms of Order XXXIX Rule 1 & 2 CPC was set aside.

2. Learned counsel for the petitioner *inter-alia* contends that petitioner filed a suit for declaration and permanent injunction with the prayer that respondents be restrained from damaging the pipe as well as gate and boundary wall constructed upon petitioner's property; that learned trial Court passed the restraining order against the respondents, which was set aside by the learned Appellate Court without any basis; that learned Appellate Court has not appreciated the available record as well as local commission report which clarifies the entire situation in favour of the petitioner.

3. Arguments heard, record perused.

4. From the perusal of record, it reveals that petitioner filed a suit for declaration and permanent injunction against the respondents with the following prayer:-

لہذا اندریں حالات استدعا ہے کہ ڈگری استنقرار حق بدیں امر کہ مدعی اپنے مکان کے مین گیٹ کو استعمال کرنے کا قانونی حقدار ہے اور مدعا علیہاں مدعی کی رہائش کا مین گیٹ بند کرنے اس کے اندر چار دیواری کو توڑ کر پائپ گزارنے اور تعمیرات کر کے مین گیٹ بند کرنے کا اختیار نہ رکھتے ہیں کی بحق مدعی برخلاف مدعا علیہاں صادر فرمائی جاوے اور حکم امتناعی دوامی اس امر کا جاری فرمایا جاوے کہ مدعی کے مکان کا مین گیٹ اور دیوار توڑ کر تعمیرات کرنے، اور پائپ گزارنے اور صحن سے پائپ گزارنے اور جان سے مار دینے کی دھمکی دینے اور ہراساں و پریشان کرنے سے ہمیشہ ہمیشہ کے لئے باز و ممنوع رہیں اور تافصلہ مقدمہ مدعی کا مکان کے مین گیٹ اور حویلی کے صحن میں سے دیوار توڑ کر پائپ گزارنے، تعمیرات کر کے مین گیٹ بند کرنے اور جان سے مار دینے کی دھمکی دینے و حراساں کرنے سے باز و ممنوع رہیں۔

5. On the basis of above mentioned relief, petitioner successfully obtained injunctive relief in his favour to protect his construction which was allowed by the trial Court vide order dated 14.02.2019 and the same was challenged by way of appeal U/O XLIII Rule 1 CPC before the Court of learned Additional District Judge (West), Islamabad, who set aside the order dated 14.02.2019, passed on application U/O XXXIX Rule 1 & 2 CPC, vide order dated 03.04.2018 (date wrongly mentioned by the Additional District Judge), as a result whereof instant civil revision has been filed.

6. In order to reach at just conclusion local commission was appointed in this case, who submitted

photographs and a detailed report in which it has specifically been mentioned by Raja Kasar Hussain, Advocate that petitioner has encroached the public right of way upto 3-1/2 feet and raised his construction and by way of filing the suit petitioner intends to protect his illegal encroachment, the relevant extract of local commission report is as under:-

اورنگزیب (مدعی) نے اپنی چار دیواری اور گیٹ سے باہر روڈ/راستہ میں تقریباً
3-1/2 فٹ بلاکوں کی دیوار و کنکریٹ کا پلر بنایا ہے جس کو "Annex-I"
میں دیکھا جاسکتا ہے۔

7. The above referred report alongwith photographs clearly reflects that petitioner has encroached public right of way and learned Appellate Court has rightly relied upon the local commission report and gave a detailed view which is in accordance with factual position. The impugned order has been passed after proper appreciation of record and no illegality has been observed in this regard, therefore, instant civil revision petition is misconceived and the same is hereby dismissed. However, learned trial Court seized with the matter is directed to conclude the trial within a period of six months under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE