

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Civil Revision No. 233/2017
Rana Muhammad Shabbir
Vs
Muhammad Awais Ali Siddiqui

Petitioner by: Syed Abaid Ullah Shah, Advocate.
Respondent by: Syed Abbas Naqvi, Advocate
Date of Hearing: 25.02.2020.

FIAZ AHMAD ANJUM JANDRAN, J.- The instant civil revision petition has arisen from the order dated 03.05.2017 passed by the learned Additional District Judge Islamabad-East whereby request of the petitioner for extension in time to file surety bond pursuant to order dated 20.04.2017 was declined and the case was fixed for recording of evidence of the plaintiff/respondent.

2. Learned counsel for the petitioner contends that sufficient material is available on record which suggests that the instant matter i.e. the suit under Order XXXVII Rule 2 CPC filed by the respondent could not be adjudicated upon fairly without recording of the evidence; that in view of the said material, petitioner/defendant was granted leave to appear and defend the suit vide order dated 20.04.2017. Although said order was conditional wherein surety bond was required to be filed till 03.05.2017, yet petitioner sought further time for compliance of the order but his request had been illegally turned down and leave granting order had been recalled. Further submits that petitioner is ready to furnish surety bond in compliance with the order dated 20.04.2017, and for the purpose sought an absolute last opportunity.

3. Learned counsel for the respondent opposed the above submissions and states that the order dated 20.04.2017 was conditional, which has not been complied

with by the present petitioner and that after passage of more than two years, if petitioner is allowed to submit surety, then the rights created in favour of respondent would be effected. Further submits that the impugned order is well reasoned and the learned Trial Court was left with no other option but to pass the impugned order, keeping in view the circumstances prevalent at the relevant time.

4. Heard the learned counsels for the parties and perused the record with their able assistance.

5. Record appended with the revision petition shows that the respondent filed a suit on the basis of negotiable instrument i.e. cheque of Rs.400,000/- under Order XXXVII Rule 2 CPC, wherein petitioner filed application for leave to appear and defend the suit and after receiving reply of the said application, the learned trial Court vide order dated 20.04.2017, allowed the application. The order of the learned Trial Court was conditional whereby petitioner was required to furnish surety bond in the tune of cheque amount till the next date of hearing i.e. 03.05.2017. The order of the learned Trial Court was not complied with by the present petitioner. In an identical case, the Hon'ble Lahore High Court vide judgment reported as "Muhammad Hashim Vs. Muhammad Meva" (2015 CLC 510) held that *"the defendant had failed to justify the circumstances which prevented him from submitting surety bond in time and which necessitated extension in time for such purpose. Application for extension in time was not accompanied by an affidavit in supports of facts stated therein. The defendant had requested for extension of time for furnishing surety bond in a casual manner which was refused by the trial Court and the suit was decreed while appeal was dismissed in circumstances."*

6. It is matter of record that no application is available on record and only oral request had been made for submission of surety bond but said request was declined by the learned trial Court vide the impugned order. Even if there was an application, that too, could not be allowed keeping in view the circumstances of the case. In another case law reported as “Mian Siffat Elahi Vs. Osman Tassaduq” 2012 YLR 2464, the Hon’ble Lahore High Court held that *“defendants were under obligation to fulfill conditions under which they were granted to leave to appear and defend the suit. The defendants also sought further time to do the needful to the satisfaction of trial Court and matter was kept pending for that purpose inspite of extensions granted by the trial Court. The defendants could not do the needful and earlier order passed by the trial Court holding surety bond submitted to be insufficient to the satisfaction of trial Court was not interfered by High Court in earlier revision petition. It was held that the defendants were themselves responsible for not fulfilling conditions on which leave was granted to them to appear and defend the suit and the revision petition was dismissed in the circumstances.”*

7. Needless to mention that the nature of the suit filed under Order XXXVII Rule 2 CPC is meant for summary proceedings in its nature. The suit was filed on 15.10.2016 and now in the year 2020, after lapse of almost four years, if on this vague assertion and casual behavior of defendant/ petitioner, application is allowed and an opportunity is provided to him for submission of surety bond, it would not only be in negation of the intent of the legislation on the subject but would also amount to interfere in a well reasoned order passed by the learned ADJ in the circumstances of the case.

8. No illegality or jurisdictional defect has been pointed out by the present petitioner, consequently, the instant revision petition being devoid of merits is dismissed.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Suhail

Announced in open Court on ____/03/2020:

JUDGE