

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A. No.115 of 2014
Kirthar Pakistan B.V.

Versus

The Publisher and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	02.06.2020	Mr. Omair Saleem Malik, Advocate for the appellant, Malik Saqib Mehmood, Advocate for the respondents.

Through the instant regular first appeal, the appellant, Kirthar Pakistan B.V., impugns the order and decree dated 22.10.2014 whereby the Court of the learned Additional District Judge, Islamabad, closed the former’s right to produce evidence by invoking the provision of Order XVII, Rule 3 of the Code of Civil Procedure, 1908 (“C.P.C.”). Furthermore, since there was no evidence in support of the appellant’s claim, its suit for recovery of Rs.50,000,000/- as damages for defamation, was dismissed.

2. Learned counsel for the appellant submitted that through a news item published in the Daily Nation, the appellant was defamed; that subsequently a clarification had been issued by the respondents but in the said clarification, the Daily Nation had stood by its earlier story in which the appellant had been defamed; that if the respondents delete the sentence “*The Nation stands by the story*”, the appellant would not agitate the matter against the respondents.

3. Learned counsel for the appellant further submitted that after the framing of issues, sufficient opportunities were not granted to the appellant to produce its evidence; and that it would be in the interests of justice if the impugned order and decree dated 22.10.2014 is set-aside,

and the matter is remanded to the learned Trial Court with the direction to provide an adequate opportunity to the appellant to produce its evidence. Learned counsel for the appellant prayed for the appeal to be allowed and for the impugned order and decree dated 22.10.2014 to be set-aside.

4. On the other hand, learned counsel for the respondents submitted that after granting three opportunities to the appellant to produce the evidence, the learned Trial Court vide order dated 09.09.2014 issued a notice under Order XVII, Rule 3 C.P.C. to the appellant with a warning that if on the next date of hearing, the appellant fails to produce evidence, its right to produce the same would be closed; that despite the said notice and warning, the appellant did not produce evidence on 22.10.2014; and that the said lapse on the appellant's part left the learned Trial Court with no option but to close its right to produce evidence. Learned counsel for the respondents prayed for the appeal to be dismissed.

5. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. The record shows that on 14.09.2013, the appellant had instituted a suit for recovery of Rs.50,000,000/- as damages for defamation against the respondents. The said suit was contested by the respondents by filing a written statement. Vide order dated 23.04.2014, the learned Trial Court framed the issues and adjourned the matter to 19.05.2014. Since the appellant fails to produce evidence on 19.05.2014, the matter was adjourned to 17.06.2014, on which date also the appellant failed to produce evidence.

7. Subsequently, the case was transferred to another Court. Vide order dated 14.07.2014, the matter was adjourned for the appellant's evidence to 09.09.2014. On 09.09.2014, since the appellant did not produce evidence, the learned Trial Court issued a notice under Order XVII, Rule 3 C.P.C. with a warning that if the appellant fails to produce evidence on 22.10.2014, its suit would be dismissed. Admittedly, the appellant did not produce evidence on 22.10.2014. Consequently, the learned Trial Court closed the appellant's right to produce evidence under Order XVII, Rule 3 C.P.C., and due to the unavailability of any evidence in support of its claim, the suit was dismissed.

8. It is our view that sufficient opportunities were given by the learned Trial Court to the appellant to produce evidence. The warning given by the learned Trial Court to the appellant vide order dated 09.09.2014 should have been taken seriously. The appellant has only its own casual attitude towards the case to blame for the passing of the impugned order and decree.

9. The Hon'ble Supreme Court of Pakistan, in case of Rana Tanveer Khan Vs. Naseer-ud-Din (2015 SCMR 1401), has held as follows:-

"2. Heard. It has been argued that only within a period of 1 month and 26 days, the evidence of the appellant was closed; besides, the appellant should have been asked by the court to at least have his statement recorded; it is further argued that no direction was issued to the appellant to produce his evidence and thus the case is covered by the judgment of this Court (supra). Before proceeding further, it may be pertinent to mention here that the case Muhammad Arshad (supra mentioned in the leave granting order) by itself is only a leave granting order and is not the enunciation of law by this Court. Be that as it may, once the case is fixed by the Court for recording the evidence of the party, it is the direction of the court to do the needful, and the party has the obligation to adduce evidence without there being any fresh direction

*by the court, however, where the party makes a request for adjourning the matter to a further date(s) for the purposes of adducing evidence and if it fails to do so, for such date(s), the provisions of Order XVII, Rule 3, C.P.C. can attract, especially in the circumstances when adequate opportunities on the request of the party has been availed and caution is also issued on one of such a date(s), as being the last opportunity(ies). In the present case we have seen that the appellant was cautioned on two occasions, which means that the appellant was put to notice that if he fails to adduce evidence, action shall be taken. ... In the present case, as mentioned above, it is clear from the record that the appellant had availed four opportunities to produce his evidence and in two of such orders (the last in the chain) he was cautioned that such opportunity granted to him at his request shall be the last one, but still on the day when his evidence was closed in terms of Order XVII, Rule 3, C.P.C. no reasonable ground was propounded for the purposes of failure to adduce the evidence and justification for further opportunity, therefore, notwithstanding that these opportunities granted to the appellant were only in a span of about 1 month and 26 days, yet his case squarely fell within the mischief of the provisions *ibid* and his evidence was rightly closed by the trial court."*

10. In view of the above, we do not find any legal infirmity in the order and decree passed by the learned Trial Court. Consequently, the instant appeal is dismissed with no order as to costs.

(GHULAM AZAM QAMBRANI)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Sultan**