

PLJ 2012 Lahore 231

Present: Muhammad Ameer Bhatti, J.

ZAHID HUSSAIN and 4 others--Petitioners

versus

MUHAMMAD KHAN and 7 others--Respondents

W.P. No. 16198 of 2011, heard on 30.11.2011.

Civil Procedure Code, 1908 (V of 1908)--

---O. XVI, R. 1--Constitution of Pakistan, 1973, Art. 199--Non-submission of list of witnesses within seven days from date of framing of issues--Jurisdiction to permit beyond that limit--Application was found on record without bearing a stamp of Court and remained pending in file of trial Court--Cause of substantial justice and ensure just and effective decision pending between the parties--Validity--Courts had not held any inquiry about availability of the list of witnesses in file hence it cannot be held that it was not filed at that stage as it had been shown in the application--If the list of witnesses had been entertained at the proper time, the position would have been different, therefore, at that stage the petitioners could not be penalized for omission/negligence of the Court--Since there was lapse or negligence on part of petitioners as well as on part of the Courts, hence it was advisable and righteous to provide an opportunity to petitioners for summoning all witnesses according to their list--For advancing the cause of substantial justice and ensure the just and effective decision of the matter pending between the parties before trial Court, orders of Courts below were set aside by allowing application for summoning all the witnesses--Subject to deposit of cost of Rs. 10,000/- as expenses to be incurred for summoning all witnesses--Petition was allowed. [P. 234] A, B & D

1988 SCMR 1167, 1995 CLC 327, 2004 SCMR 1367 & 2005 MLD 1713, rel.

Rules and Regulations--

---Scope of--Rules and Regulations are meant to streamline the procedure and administer the course of justice--They are not there to thwart same--Courts have always preferred a decision of a case on merits and technicalities have always been discouraged.[P.] C

PLD 2002 SC 491, rel.

Mr. Zulfiqar Ali Noon, Advocate for Petitioners.

Mr. Sajjad Sarwar Saqib, Advocate for Respondent No. 5.

Date of hearing: 30.11.2011.

Judgment

This petition is directed against the orders dated 15.12.2010 and 23.06.2011 passed by the learned Respondents No. 7 and 8 respectively.

2. The brief facts of the case are that respondents 3 to 5 filed a suit for declaration to effect that the sale deed dated 26.01.1989 and Mutation No. 310 dated 04.11.1989 purported to be executed in favour of predecessor of the petitioner namely Muhammad Siddique on the basis of the power of attorney dated 14.12.1988 is illegal, un-lawful and based on fraud and mis-representation. The suit was contested by the petitioners by filing the written statement. From the divergent pleadings of the parties the issues were framed and parties were directed to lead the evidence accordingly. The respondents produced their evidence and case was fixed for the evidence of the present petitioners and they submitted the application wherein the list of the witnesses have been inserted who have been summoned through the Court and prayer has been made for the deposit of the expenses for the summoning of the said witnesses. The report was summoned from the Ahlmad, who pointed out that the required witnesses are part of the list of witnesses which has been already submitted by the present petitioners/defendants. The learned trial Court after scrutiny of the file dismissed the application on the ground that the list of witnesses had not been filed within the period prescribed under the law after framing the issues, hence this application cannot be entertained and had been dismissed vide order dated 15.12.2010. This order was assailed in revision petition before the learned Revisional Court, which also dismissed the same vide order dated 23.06.2011.

3. Learned counsel for the petitioner contends that although the petitioner has not submitted the list of witnesses within the seven days after framing the issues, however, an application dated 29.07.2006 has been submitted which is available on record. However, no order has been passed by the learned trial Court on this application and the report of the Ahlmad also reflects the presence of this list of witnesses, hence there was no occasion for the learned trial Court not to issue the process for summoning of these witnesses and rejection of the petitioners' application is not inconsonance with the provisions of law. The revision petition has also been dismissed by the Revisional Court without considering this aspect of the case, hence both the Courts below have committed illegality or irregularity and failed to exercise the jurisdiction vested in them by the law while deciding the application of the petitioners. Further contends that the law favours to decide the matter on merits instead of knocking out the parties on technicalities. Learned counsel for the petitioners has placed reliance on Messrs Naeem Engineering Corporation Vs Government of the Punjab through the Secretary Agriculture and another (1988 SCMR 1167), Mst. Shanaz Begum and 4 others vs. Ashiq Hussain Bhatti and 2 others (1995 CLC 327), Bashir Ahmad Vs. Fazal Din (1994 CLC 1920), Umar Hayat Vs. Additional District Judge and others (2004 SCMR 1367) and Naeem Akhtar Vs. Additional District Judge and others (2005 MLD 1713).

4. On the other hand learned counsel for the respondent contends that the petitioners had failed to submit the list of witnesses within seven days from the framing of the issues a condition precedent for submitting the list of witnesses and at this belated stage unless a plausible reason has been given for non-submission of the list within the period process cannot be issued. Learned counsel for the respondent has placed reliance on Abdul Jalil and another Vs. Mansoor Ahmad (1980 CLC 1815), Mst. Musarrat Bibi and 2 others Vs. Tariq Mahmood Tariq (1999 SCMR 799), Ghulam Nabi Vs. Additional District Judge, Rajanpur and others (2004 CLC 650) and Dhoop Khan Vs. Muhammad Yaseen and others (1995 MLD 868). Further contends that the order of the both Courts below are in accordance with law and in line the law laid down by this Court as well as the Hon'ble Supreme Court of Pakistan, therefore, this Court while exercising the writ jurisdiction cannot interfere in the lawful orders passed by the learned Courts below which were within their jurisdiction.

5. There is no cavil in the proposition that the list of witnesses must have been submitted within seven days from the date of framing of the issues as required under Order XVI, Rule 1 CPC and in case of non-submission, even then the Court has the jurisdiction to permit beyond that limit, if a plausible reason has been shown by the delinquent party. I have anxiously noticed this fact that an application dated 29.07.2006 has been found in the record of the learned trial Court without any order which seems to have been filed without bearing a stamp of the Court and it remained pending in the file of the trial Court till its

decision dated seems to have been filed without bearing a stamp of the Court and it remained pending in the file of the trial Court till its decision dated 09.12.2010 where only 'dis-allowed' is mentioned. The Courts have not held any inquiry about the availability of this list of witnesses in the file, hence it cannot be held that it was not filed at that stage as it has been shown in this application. If this list of witnesses has been entertained at the proper time, the position would have been different, therefore, at this stage the petitioners alone cannot be penalized for the omission/negligence of the Courts. Moreover, I have made the comparison of this list with the list submitted by the plaintiff which was submitted within the stipulated period as provided under the law in which 5/6 persons are the same in both lists of the parties. However, out of plaintiffs' list only one person has been summoned as the witness and remaining have been dropped by the plaintiff. If this case is considered in this particular context, these witnesses are necessary for the just decision of the case in hand. Since there is lapse or negligence on the part of the petitioners as well as on the part of the Courts, hence it is advisable and righteous to provide an opportunity to the petitioners for summoning all the witnesses according to their list.

6. Apart from this, it is time again hold by the learned Supreme Court and this Court that rules and regulations are only meant to streamline the procedure and administer the course of justice. They are not there to thwart the same. The Courts have always preferred a decision of a case on merits and technicalities have always been discouraged. Reliance is placed on Muhammad Anwar Khan and 5 others vs. Chaudhry Riaz Ahmad and 5 others (PLD 2002 SC 491).

7. Consequently, for advancing the cause of substantial justice and ensure the just and effective decision of the matter pending between the parties before the learned trial Court, the orders of both the Courts below are set aside by allowing this petition and the petitioners' application for summoning all the witnesses is accepted - subject to deposit of cost of Rs.10,000/- as also the expenses to be incurred for summoning all the witnesses determined by the learned trial Court. This petition is allowed in the above-mentioned terms.

(R.A.) Petition allowed