IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Justice Irfan Saadat Khan
Justice Shahid Bilal Hassan

C.P.L.A.No.277-Q of 2024
(Against the judgment dated 24.07.2024 passed by High Court of Balochistan, Quetta in Constitution Petition No.1056 of 2023)

Muhammad Asim

... Petitioner(s)

Versus

Dr. Abdul Hamid Jan and others

... Respondent(s)

For the Petitioner(s): Mr. Abdul Wali Khan Nasar, ASC

For Respondent: N.R.

Date of Hearing: 16.01.2025

ORDER

SHAHID BILAL HASSAN, J. Dissatisfied with the judgment dated 24th July, 2024 passed in constitutional petition No.1056 of 2023 by the High Court of Balochistan, Quetta, the petitioner has filed the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973.

2. Succinctly, the petitioner instituted a suit for declaration, temporary and permanent injunction against the respondents by maintaining that Quetta Development Authority (QDA) announced a housing scheme Samungli and a plot No.92/C measuring 1800 sq.ft. was allotted to one Iqbal Rashid, after payment of entire amount and fulfillment of codal formalities, QDA executed an agreement dated 10.10.1983. Allegedly, Iqbal Rashid moved an application to defendant/respondent No.3 for issuance of site plan and building permit, which were issued by the concerned officer on 13.06.1994 and after completion of house, the defendant/respondent No.3 also granted

completion certificate dated 14.01.1994. The said house was later on purchased by defendant/respondent No.2 namely Muhammad Khalid Khan from Iqbal Rashid and also made a request for transfer letter dated 08.10.2011; the defendant/respondent No.3 legally transferred the above said plot/house in the name of the defendant/respondent No.2 on 12.11.2011. Thereafter, the present petitioner purchased the said plot/house from the defendant/respondent No.2 and paid the entire consideration, in return the defendant/respondent No.2 executed general power of attorney dated 16.09.2019 in favour of the petitioner and handed over peaceful possession to the petitioner. The petitioner demolished the dilapidated house and willing to reconstruct the house, also employed a Chowkidar for the said plot; however, during new construction the defendant/respondent No.1, purportedly, without any cogent reason started interference in the peaceful possession of the petitioner over the suit property; hence, the suit.

3. The respondent/defendant No.1 contested the suit by submitting written statement and claimed to have purchased the suit property from the defendant/respondent No.2 through execution of general power of attorney dated 12.09.2019 and prayed for dismissal of the suit. Another suit No.65/2020 was consolidated with the suit under discussion and the divergence in pleadings of the parties was summed up into consolidated issues on 19.02.2020 and petitioner was directed to produce his evidence, who only examined his witness namely Mustafa Advocate as P.W.1 but cross examination on the said witness was reserved. Later on, the petitioner despite affording numerous opportunities by the trial Court could not produce the already examined witness (P.W.1) for the purpose of cross examination and remaining evidence, therefore, trial Court closed his right of production of evidence vide order dated 29.08.2022; however, later on, on filing application for recalling the said order dated 29.08.2022, the petitioner was allowed to produce his witnesses/evidence vide order dated 12.09.2022 subject to cost of Rs.4000/- but in-spite of that he failed to avail the leniency shown by the trial Court and could not bring his witnesses; therefore, the trial Court again struck off his right to lead evidence except his own statement vide order dated 19.12.2022. The petitioner filed an application under Order IX, Rule 9, Code of Civil Procedure, 1908 for recalling the above said order dated 19.12.2022

but the trial Court vide order dated 15.03.2023 dismissed the said application. The petitioner being aggrieved filed revision petition against the said but it was dismissed vide order dated 21.06.2023, which culminated in filing of the constitution petition before the High Court; however, the petitioner could not succeed in getting a favourable order as the same was dismissed vide impugned judgment dated 24.07.2024.

4. We have given patient hearing to the learned counsel for the petitioner and have also gone through the record. It is manifestly and vividly clear from the record that consolidated issues were formulated in this case on 19.02.2020 and petitioner was directed to produce his evidence, who only examined his witness namely Mustafa Advocate as P.W.1 but cross examination on the said witness was reserved. However, the petitioner, despite affording numerous opportunities by the trial Court, could not produce the already examined witness (P.W.1) for the purpose of cross examination and remaining evidence, therefore, his right for production of evidence was closed vide order dated 29.08.2022. The petitioner filed application for recalling the said order dated 29.08.2022 and the trial Court vide order dated 12.09.2022 accepted the said application subject to cost of Rs.4000/- and provided the petitioner opportunity to lead his evidence but in-spite of such leniency shown by the trial Court, the petitioner could not bring his witnesses in the witness box; therefore, the trial Court again struck off his right to lead evidence except his own statement vide order dated 19.12.2022. The above portrayal of the facts goes to make it diaphanous that how the petitioner proceeded with the matter and pursued the case. It seems that he intends to progress with the matter as per his whims and wishes, to carry on entangling his rival(s) as well as the Court without any final determination of rights of the parties and wants to continue his possession over the suit property. Such practice has been discouraged by this Court, because one cannot be allowed to make mockery of law and procedure provided for conducting proceedings in a lis, because the ultimate goal of enactment(s) and procedural law(s) is to determine the rights of the parties as early as possible, so that trust of the litigants could be developed upon the institution(s). In the instant case, more than sufficient opportunities have been granted to the petitioner for

producing his evidence and despite putting him under warning he did not bother to avail the same. Such like indolent person(s) cannot be allowed to play with the process of the Court and linger on the matter on one pretext or the other, that too, without any plausible and valid reason. It is evident from record that through speaking order(s) the petitioner was granted with absolute last and final opportunities for production of his evidence with clear cut warnings, the petitioner did not pay any heed to the orders and direction of the trial Court, which shows his adamant attitude towards the orders of the trial Court. The above picture of affairs makes it crystal clear that how the petitioner pursued his case and showed his disobedience and indifferent demeanour towards the orders of the Court; thus, such like indolent person cannot seek favour of law, because law favours the vigilant and not the indolent. This Court in judgment of *Rana Tanveer Khan*[1] unequivocally held:

> *'…… it is clear from the record that the petitioner had availed four opportunities to produce his evidence and in two of such dates (the last in the chain) he was cautioned that such opportunities granted to him at his request shall be that 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 petitioner were squarely fell within the mischief of the provisions ibid and his evidence was rightly closed by the trial court. As far as the argument that at least his statement should have been recorded, suffice it to say that the eventuality in which it should be done has been elaborated in the latest verdict of this Court (2014 SCMR 637). From the record it does not transpire if the petitioner was present on the day when his evidence was closed and/or he asked the court to be examined; this has never been the case of the petitioner throughout the proceedings of his case at any stage; as there is no ground set out in the first memo of appeal or in the revision petition.'*

It was further held that:-

> *'2. … 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 purpose of*

[1] *Rana Tanveer Khan v. Naseer-Ud-Din and others* (2015 SCMR 1401)

> *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).'*

While affirming the above said view, in judgment[2] it was further held that:

> *'4. ..... It is unfortunate that the prevailing pattern in the conduct of litigation in the Lower Courts of Pakistan is heavily permeated with adjournments which stretch, what would otherwise be a quick trial, into a lengthy, expensive time-consuming and frustrating process both for the litigant and the judicial system. While some adjournments are the consequences of force majeure, most are not. To cater for the later and to discourage misuse, the C.P.C. through Order XVII, Rule 3 has provided the Court with a curse of action that checks such abuse.'*

In the said judgment, it was further held:-

> *'6. A bare reading of Order XVII, Rule 3, C.P.C. and case law cited above clearly shows that for Order XVII, Rule 3, C.P.C. to apply and the right of a party to produce evidence to be closed, the following conditions must have been met:-*
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> *i. at the request of a party to the suit for the purpose of adducing evidence, time must have been granted with a specific warning that such opportunity will be the last and failure to adduce evidence would lead to closure of the right to produce evidence; and*
>
> *ii. the same party on the date which was fixed as last opportunity fails to produce its evidence.*
>
> *In our view it is important for the purpose of maintaining the confidence of the litigants in the court systems and the presiding officers that where last opportunity to produce evidence is granted and the party has been warned of consequences, the court must enforce its order unfailingly and unscrupulously without exception. Such order would in our opinion not only put the system back on track and reaffirm the majesty of the law but also put a check on the trend of seeking multiple adjournments on frivolous grounds to prolong and delay proceedings without any valid or legitimate rhyme or reason. Where the Court has passed an order granting the last opportunity, it has not only passed a judicial order but also made a promise to the parties to the lis that no further adjournments will be granted for any reason. The Court must enforce its order and honor its promise. There is absolutely no room or choice to do anything else. The order to close the right to produce evidence must automatically follow failure to produce*

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[2] *Moon Enterpriser CNG Station, Rawalpindi v. Sui Northern Gas Pipelines Limited through General Manager, Rawalpindi and another* (2020 SCMR 300)

> *evidence despite last opportunity coupled with a warning. The trend of granting (Akhri Mouqa) then (Qatai Akhri Mouqa) and then (Qatai Qatai Akhri Mouqa) make a mockery of the provisions of law and those responsible to interpret and implement it. Such practices must be discontinued, forthwith.'*

Besides, this Court in recent judgment[3] has deliberated upon the moot point involved in this case and in an elaborative way has discussed the pros and cons of Order XVII, Rule 3, Code of Civil Procedure, 1908 with all other relevant provisions of law and the essence of the same is that litigant cannot be left unleashed and unbridled to act as he intends and proceed with the lis as per his whims and wishes rather he would be made to abide by the rules and procedure provided under the law to bring the lis to an ultimate end at the earliest. As such, we find no illegality in the impugned judgment warranting interference by us.

6. The compendium of the discussion above is that we do not find it a fit case for grant of leave. Leave is refused, consequent whereof the petition stands dismissed.

Judge

Judge

Islamabad
16.01.2025
'Approved for reporting'
(M.A.Hassan)

[3] Lutfullah Virk v. Muhammad Aslam Sheikh (PLD 2024 SC 887)