

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-III

Mr. Justice Yahya Afridi
Mr. Justice Shahid Waheed
Mr. Justice Aqeel Ahmed Abbasi

CPLA No.47 of 2024

(Against the judgment dated 15.12.2023 of the Peshawar High Court, Peshawar, passed in Civil Revision No.235-P of 2022.

Muhammad Ayaz and others ...Petitioner(s)

Versus

Mst. Saima Saeed and others ...Respondent(s)

For the Petitioner(s) : Mr. M. Amin Khattak Lachi, ASC

For the Respondent(s) : *Nemo.*

Date of Hearing : 11.09.2024

ORDER

Shahid Waheed, J: In a suit for declaration and injunction, the plaintiffs (*petitioners herein*) applied for a summons to be issued to the first defendant, Mst. Saima Saeed, as their witness. The Trial Judge declined the application, and his order was first upheld by the Appellate Court and then by the Revision Court. It is these orders that have given rise to this petition under Article 185(3) of the Constitution.

2. The Courts' refusal is supported by the observations of the Privy Council in *Kishori Lal v. Chunni Lal* (31 All. 116 at page 122). Their Lordships of the Privy Council have referred to the practice, which sometimes seemed to obtain in some Courts of calling the party's opponent as a witness. They have observed

that this practice is highly objectionable. "Such a practice," said their Lordships, "ought never to be permitted in the result to embarrass judicial investigation." In another case titled *Mahunt Shatrugan Das v. Bawa Sham Das and others* (AIR 1938 PC 59), the Privy Council reiterated that the practice of calling the defendant as a witness to give evidence on behalf of the plaintiff is condemnable.

3. Based on the precedents cited above, we may say that it is a bad practice for parties to refrain from entering the witness box when they are in a position to give personal evidence. Therefore, the first defendant in the suit, giving rise to this petition, is expected to provide personal testimony in support of her case. If she does not appear without sufficient cause, it will amount to suppression or withholding of evidence, and the Court will be entitled to draw an inference against her.

4. Be it noted that, in the facts of the present case, if the first defendant fails to appear in the witness box, allowing the plaintiffs to compel her presence by the issue of a witness summons would still be objectionable. Such a practice places the examination and cross-examination of a witness in the wrong hands, hinders fair trial, and obstructs justice.

5. That seems to be the effect of the orders made by the Courts below. As a result, we do not find infirmity in the orders and are poised to uphold them.

6. This petition is dismissed, and leave is accordingly refused.

Islamabad
11.09.2024
APPROVED FOR REPORTING