

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Amin-ud-Din Khan

Civil Petition No. 2633 of 2018

*(Against the judgment dated 12.03.2018 of the
Peshawar High Court, Abbottabad Bench passed
in Civil Revision No.128-A/2014)*

Bashir Ahmed. ... *Petitioner*

Versus

Muhammad Zaman. ... *Respondent*

For the Petitioner: Syed Javed Akbar, ASC.
Syed Rifaqat Hussain Shah, AOR.

For the Respondent: Not represented.

Date of Hearing: 04.11.2020.

ORDER

Qazi Faez Isa, J. A pre-emption suit was filed by the petitioner which was dismissed by the Trial Court and such dismissal of the suit was upheld by the Appellate Court. Thereafter, civil revision was filed before the High Court but that too was dismissed. It is against these three concurrent judgments that the instant petition has been filed by the petitioner.

2. Syed Javed Akbar, the learned counsel representing the petitioner, states that the petitioner was non-suited as it was held that there was difference in the testimonies of the witnesses, namely, Muhammad Sultan (PW-4) and Khalid Bashir (PW-5) and the petitioner with regard to the time information of the sale was conveyed and the said witnesses stated 3 pm whereas the plaintiff-petitioner (PW-3) had stated its time to be 5 pm. The learned counsel states that the learned Judge of the Trial Court had wrongly recorded the time when the said witnesses had testified on 17 January 2011 and immediately learning of this mistake on the very next date, that is 24 January 2011, an application seeking correction of the said time was moved, but no order on the application was passed and in the appeal the learned Judge of the Appellate Court stated that this was not an error that required

correction but instead the petitioner had sought to change the testimonies of the said witnesses. He further and alternatively states that *Talb-i-Muwathibat* was made on 11 November 2005 whereas the said two witnesses had testified on 17 January 2011, that is after a period of over five years, and in all likelihood had forgotten the time, and such a minor discrepancy is not one that undermines the performance of the *Talb-i-Muwathibat*, and relies on the case of *Abdul Latif v Dil Mir* (2010 SCMR 1087).

3. We have heard the learned counsel for the petitioner and with his assistance also examined the order-sheets of the Trial Court. We note that after the said application for correction was filed a number of dates were fixed for evidence, but not on a single date did the plaintiff-petitioner or his counsel draw the attention of the learned Judge to the said application. We are cognizant that civil judges every day have a large number of cases before them, therefore, it is the duty of counsel in particular and the parties in general to bring to the notice of the learned judges matters requiring attention and point out applications which have to be attended to, but in the present case this was not done. However, the learned Judge of the Appellate Court did attend to this matter and had decided it against the petitioner.

4. We now consider whether a two hour delay in making the demand of *Talb-i-Muwathibat* is fatal to a pre-emption suit. The *Explanation* to subsection (1) of Section 13 of the North-West Frontier Province Pre-emption Act, 1987 states that, *Talb-i-Muwathibat* 'means immediate demand by the preemptor in the sitting or meeting (Majlis) in which he has come to know of the sale declaring his intention to exercise the right of pre-emption.' The use of the word *immediate* is significant and cannot be undermined; a delay of two hours in making the demand of *Talb-i-Muwathibat* is not an *immediate* demand and such delay is fatal to a successful claim of pre-emption. We now consider whether the cited *Abdul Latif* case will save the claim of the preemptor. In the *Abdul Latif* case the witness did not specifically mention a time, but (as recorded in the judgment) "*that he could not remember the exact time*". Not remembering a time may not be categorized as contradicting the time mentioned by the preemptor. However, in the present case the petitioner stated that he had made the demand at 5 pm but his two witnesses stated that they had informed him about the sale at 3 pm, which is when the demand for *Talb-i-Muwathibat* should have been made. The two

hours delay in making the *Talb-i-Muwathibat* demand was fatal to the petitioner's pre-emption suit because it was not made in terms of the said law, that is, immediately.

5. That except the aforesaid points, which have been attended to by us, no other point is raised by the learned counsel to justify the grant of leave. The courts below concurrently decided against the petitioner on valid legal grounds and we are not persuaded to take a different view. Consequently, leave to appeal is declined and this petition is dismissed.

Judge

Judge

Bench-IV
Islamabad:
04.11.2020

Approved for Reporting
(M. Tauseef)