

2022 Y L R 2174

[Lahore]

Before Ch. Muhammad Iqbal, J

ABDUL GHAFFAR---Petitioner

Versus

Hafiz ATTA UR REHMAN and another---Respondents

Civil Revision No. 36357 of 2021, heard on 4th January, 2021.

Civil Procedure Code (V of 1908)---

---O XVII, R. 3---Court may proceed notwithstanding either party fails to produce evidence, etc.---Party availing numerous opportunities including the last and final opportunity---Duty of Court--- Scope--- Petitioner/plaintiff despite availing opportunities failed to produce evidence---Trial Court dismissed the suit---Appeal of petitioner was also dismissed by Appellate court---Held that Court had the duty to regulate the proceedings of the case with the object to decide the lis expeditiously---If the court reached the conclusion that a party to lis was deliberately avoiding to lead evidence and maliciously prolonging the matter on different unreasonable pretext, then it was well within the jurisdiction of court under O. XVII, R. 3, C.P.C., to strike down the right of producing evidence of such a defaulting party---When Court had passed an order granting the last opportunity, it had not only passed a judicial order but also made a firm promise to the parties for not granting any further adjournment---Unflinching expectations of the litigant were attached with Court that it shall enforce its order in its true letter and spirit---Civil revision was dismissed.

Syed Tahir Hussain Mehmoodi and others v. Agha Syed Liaqat Ali and others 2014 SCMR 637; Rana Tanveer Khan v. Naseer-ud-Din and others 2015 SCMR 1401; Moon Enterprises CNG Station, Rawalpindi v. Sui Northern Gas Pipelines Limited through General Manager, Rawalpindi and another 2020 SCMR 300; Rai Muhammad Riaz (decd) through L.Rs. and others v. Ejaz Ahmed and others PLD 2021 SC 761 and Mst. Zaitoon Begum v. Nazar Hussain and another 2014 SCMR 1469 rel.

Zulfiqar A. Shaikh for Petitioner.

Waqar Anjum for Respondents.

Date of hearing: 4th October, 2021.

JUDGMENT

CH. MUHAMMAD IQBAL, J.---Through this civil revision, the petitioner has challenged the legality of order and decree dated 26.04.2019 passed by the learned Civil Judge, Lahore who dismissed the suit for declaration, cancellation of document with consequential relief filed by the petitioner under Order XVII, Rule 3, C.P.C. for want of evidence and order and decree dated 16.03.2021 passed by the learned Addl. District Judge, Lahore who dismissed the appeal of the petitioner.

2. Brief facts of the case are that the petitioner/plaintiff filed suit for declaration, cancellation of document with consequential relief, with possession along with contempt of court under Section 3/4 of Contempt of Court Act, with all other law and rules against other defendants alleging therein that Abdul Ghani real brother of the plaintiff was owner of house/property No.6, Street No.10/2-A, Mohallah Basit Street, Outfall Road, Lahore who died issueless in September, 1990 leaving behind the petitioner as well as widow Mst. Sarwari Begum as his legal heirs. Petitioner being brother of Sarwari Begum sold out half part of suit property to Mst. Naseem Akhtar whereas other half portion gifted out to Anjman Mudarasa Anwar ul Quran but said Mst. Sarwari Begum got inherited only 1/4th share. Respondents were proceeded against ex-parte and the case was adjourned for ex-parte evidence of the petitioner on 17.05.2016. The petitioner despite availing opportunities did not produce evidence and the learned trial court by invoking its jurisdiction under Order XVII, Rule 3, C.P.C. dismissed the suit vide order and decree dated 26.04.2019. The appeal of the petitioner was also dismissed by the learned appellate court vide order and decree dated 16.03.2021. Hence, this civil revision.

3. I have heard the learned counsel for the parties at some length and gone through the record with their able assistance.

4. Admittedly, ex-parte proceedings were initiated against the respondents/ defendants on 28.04.2016 and case was adjourned for evidence of the petitioner for 17.05.2016. From 17.05.2016 till 26.04.2019 despite availing numerous opportunities including the last and final opportunity with cost as well as with

the caution that in case of failure to produce evidence the right to produce evidence would be closed, petitioner did not produce his evidence without any justifiable cause which shows his indifferent, non-serious attitude and this kind of contumacious non-compliance of court's order invite invocation of penal provisions of Order XVII, Rule 3, C.P.C. It is duty of the court to regulate the proceedings of the case with the object to decide the lis expeditiously and it, if reaches the conclusion that a party to lis is deliberately avoiding to lead evidence and maliciously prolonging the matter on different unreasonable pretext, then it is well within the jurisdiction under Order XVII, Rule 3, C.P.C. to strike down the right of producing evidence of such a defaulting party. It is worth mentioning here that the Hon'ble Supreme Court has considered four opportunities as sufficient for a party to produce its entire evidence in order to counter the unnecessary delay in conclusion of the trial. When the Court has passed an order, granting the last opportunity, it has not only passed a judicial order but also made a firm promise to the parties for non-granting any further adjournment. Unflinching expectations of the litigant are attached with the court that it shall enforce its order in its true letter and spirit. Reliance is placed on the cases titled as Syed Tahir Hussain Mehmoodi and others v. Agha Syed Liaquat Ali and others (2014 SCMR 637) and Rana Tanveer Khan v. Naseer-ud-Din and others (2015 SCMR 1401). In a latest judgment cited as Moon Enterprises CNG Station, Rawalpindi v. Sui Northern Gas Pipelines Limited through General Manager, Rawalpindi and another (2020 SCMR 300), the Hon'ble Supreme Court of Pakistan has held that:-

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

Reliance is also placed on the case titled as Rai Muhammad Riaz (decd) through L.Rs. and others v. Ejaz Ahmed and others (PLD 2021 SC 761).

5. Learned counsel for the petitioner has not been able to point out any illegality or material irregularity in the impugned orders and decrees passed by the learned Courts below and has also not identified any jurisdictional defect. The concurrent findings of fact are against the petitioner which do not call for any interference by this Court in exercise of its revisional jurisdiction in absence of any illegality or any other error of jurisdiction. Reliance is placed on the case titled as Mst. Zaitoon Begum v. Nazar Hussain and another 2014 SCMR 1469.

6. In view of above, this civil revision is dismissed in limine being devoid of any merit with no order as to cost.

MHS/A-119/L Revision dismissed.

