

11/1/18

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN.

9 *AFR*
CIVIL PETITION NO.3985 OF 2019.

(Against the order dated 10.10.2019
passed by the Lahore High Court,
Rawalpindi Bench, Rawalpindi in Writ
Petition No.2918 of 2019).

Moon Enterprises CNG Station, Rawalpindi. ...Petitioner(s).

Versus

Sui Northern Gas Pipelines Limited through
its General Manager, Rawalpindi and another.

...Respondent(s)

For the petitioner(s): Sh. Zamir Hussain, ASC.
Syed Rifaqat Hussain Shah, AOR.

For the respondent(s): N.R.

Date of Hearing: 20.11.2019.

ORDER

IJAZ UL AHSAN, J.- The Petitioner seeks leave to
appeal against an Order dated 10.10.2019 passed by the
Learned Lahore High Court, Rawalpindi Bench, Rawalpindi in
Writ Petition No.2918 of 2019. Through the impugned order,
the Writ Petition filed by the Petitioner was dismissed and the
order dated 07.10.2019 passed by the Learned Additional
District Judge/Gas Utility Court, closing the right of the
Petitioner to produce evidence, was upheld.

2. Brief facts necessary for the decision of the *lis* are
that Respondent No.1 (Sui Northern Gas Pipeline Ltd) filed a
suit against the Petitioner (Moon Enterprises CNG Station)
seeking recovery of Rs.10,430,632/- on account of non-

payment of Gas consumption bill. The Petitioner was granted leave to defend the suit. Once the evidence of Respondent was concluded, the Petitioner was afforded a number of opportunities by the Learned Trial Court to lead evidence, but the Petitioner failed to comply. The Learned Trial Court closed the Petitioner's right to produce evidence on 17.10.2019. Aggrieved, the Petitioner filed a Writ Petition before the High Court. *Vide* the Impugned Judgment dated 10.10.2019, agreeing with the Order of the Trial Court closing the Petitioner's right to lead evidence, the High Court dismissed the Writ Petition.

3. Learned Counsel for the Petitioner submits that the Trial Court having granted to the Petitioner leave to defend ought not to have closed the right of the Petitioner to produce evidence as the provisions of Order XVII Rule 03 of the Civil Procedure Code 1908 ("**CPC**") are discretionary in nature and not mandatory. He stated that on the last date of hearing, prior to the closing of the Petitioner's right to produce evidence, Lawyers were on strike and no proceedings were conducted. He submitted that proxy counsel on behalf of the Petitioner had requested adjournment for a valid reason and in such circumstances, Order XVII Rule 3 CPC could not be attracted. Learned Counsel argued that technicalities must give way to substantial justice and in light of the circumstances, exercise of discretion should have been in favour of the Petitioner.

4. We have heard the Learned Counsel and perused the record. 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 CPC through Order XVII Rule 03 has provided the Court with a course of action that checks such abuse. We now advert to Order XVII Rule 03 CPC, which is reproduced below for ease of reference:-

3. Court may proceed notwithstanding either party fails to produce evidence, etc: Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding each default, proceed to decide the suit forthwith.

5. This court has through a plethora of judgments, settled the law on the aforementioned provision. In Maulvi Abdul Aziz Khan Versus Mst. Shah Jahan Begum and 2 Others (PLD 1971 SC 434) this court held that:

"It will be seen that this rule applies to a case where time has been granted to a party at his instance, to produce evidence, or to cause the attendance of witnesses or to perform any other act necessary for the progress of the suit and will not apply unless default has been committed by such party in doing the act for which the time was granted.

In the case of Ghulam Qadir alias Qadir Bakhsh Versus Haji Muhammad Suleman and 6 Others (PLD 2003 SC 180) it was held that failure to produce evidence despite a last

opportunity being granted would attract Order XVII Rule 03 CPC. More recently, it was held in the case of Rana Tanveer Khan Versus Naseer-Ud-Din and Others (2015 SCMR 1401)

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 purposes of 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).

6. A bare reading of Order XVII Rule 03 CPC and Case law cited above clearly shows that for Order XVII Rule 03 CPC to apply and the right of a party to produce evidence to be closed, the following conditions must have been met:

- 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 said 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 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

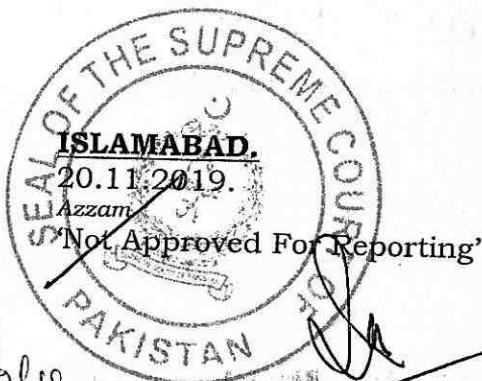
legitimate rhyme or reason. Where the Court has passed an order granting the last opportunity, it has not only passed a judicial order but also made a promise to the parties to the *lis* that no further adjournments will be granted for any reason. The Court must enforce its order and honour its promise. 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*) make a mockery of the provisions of law and those responsible to interpret and implement it. Such practices must be discontinued, forthwith.

7. Turning to the merits of the present case, the record clearly shows that the Petitioner was granted a number of adjournments so that it may produce its evidence. It was on 24.09.2019, that the Learned Gas Utility Court allowed the Petitioner one last and final opportunity with a warning that failure to comply would result in its right to produce evidence being closed. The Petitioner, despite the clear warning, failed to produce its evidence on 07.10.2019 and the Learned Gas Utility Court closed its right to produce evidence. The Petitioner did however, later on the same day, file an application for adjournment wherein it was stated that the Petitioner's witness was suffering from dengue fever. The Learned Gas Utility Court rightly dismissed the application as it lacked both an affidavit and a medical certificate which may

have substantiated the grounds of the application. Suffice it to say that we agree with the view taken by both the Learned Gas Utility Court and the Learned High Court. Once the Petitioner had been granted a final opportunity, and had also clearly and unambiguously warned against default and the consequence thereof, the Petitioner was required to produce evidence on that date as no further time could or should have been granted. In this case the necessary conditions for Order XVII Rule 03 CPC to apply were fully met and the Learned Trial Court correctly used its power to close the right of the Petitioner to produce evidence. The Learned Counsel for the Petitioner has not been able to demonstrate any infirmity, error or flaw in the impugned order that may have furnished any justification or basis for interference in the impugned judgment.

8. For the reasons recorded above, we do not find any merit in this petition. It is accordingly dismissed. Leave to appeal is refused.

Sd/-
Sd/-



Sd/-
23/12/19