

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Justice Shahid Bilal Hassan
Justice Aamer Farooq

C.P.L.A.No.1033-L of 2024
(Against the order dated 21.05.2024 passed by Lahore High Court, Lahore in C.R.No.30366 of 2024)

Muhammad Akram ... *Petitioner(s)*

Versus

Shafaqat Ali ... *Respondent(s)*

For the Petitioner(s): Mr. Muhammad Akhtar Rana, ASC

For Respondent: Syed Almas Haider Kazmi, ASC

Assisted By: Mr. Owais Nasir, L.C.

Date of Hearing: 27.03.2025

ORDER

SHAHID BILAL HASSAN, J. Dissatisfied with the order dated 21st May, 2024 passed in C.R.No.30366 of 2024 by the Lahore High Court, Lahore, the petitioner has filed the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, seeking indulgence of this Court while granting leave to appeal against the said order.

2. Succinctly, the petitioner being plaintiff instituted a suit for pre-emption alongwith permanent injunction against the respondent/defendant, who filed contesting written statement and prayed for dismissal of the suit. Divergence in pleadings of the parties was summed up into issues on 04.03.2023 and suit was fixed for evidence of the petitioner/plaintiff but he failed to produce his evidence despite availing of many opportunities afforded to him by the trial Court, which lead to invoking of jurisdiction under Order XVII, Rule 3, Code of Civil Procedure, 1908 ("**The Code**") by the trial Court vide order/judgment and decree dated 25.01.2024. The petitioner being dissatisfied

preferred an appeal but result remained the same vide judgment and decree dated 09.04.2024 passed by the appellate Court and the same culminated in filing of the above cited revision petition before the High Court; however, no favourable order could be fetched by the petitioner from the High Court as his revision petition was also dismissed vide order, impugned before us.

3. Heard.

4. Laws and Rules are enacted and formulated as well as promulgated in order to streamline the working and functioning of an institution(s), Court(s) and forum(s) and if an institution(s) is functioning without any formal rule(s) or regulation(s) and any parameters, making its employee(s) answerable and accountable for the act(s) or fault, it would cause anomalous situation and such institution(s) would not remain functional for a long time. Same is the situation in the judicial system, if the litigants are allowed to proceed with their matters without following rules and regulations, framed and promulgated to lead litigation to an ultimate end at the earliest, it would not only increase the burden upon the Court(s) but also destroy the trust of the general public upon judicial system, as such the litigants cannot be permitted to take the Courts for granted and proceed with the lis as per their whims and wishes as well as cause agony to their rival parties without any progress in the matter(s) brought against them (rival party). Having observed above, in the instant case after procuring attendance of the respondent/defendant and submission of written statement, the issues were formulated on 04.03.2023 and petitioner was directed to produce his evidence and the suit was adjourned for 25.03.2023. Again two consecutive adjournments were granted but neither the petitioner(s) nor his witnesses appeared before the trial Court. On 23.09.2023, upon the request of the learned counsel for the petitioner/plaintiff, the suit was adjourned for production of evidence with absolute last and final opportunity for 18.11.2023. However, on the adjourned date again the petitioner failed to appear and produce his evidence; upon request of his learned counsel the suit was adjourned for evidence of the petitioner subject to costs of Rs.1000/-, notably, with an absolute last and final opportunity, for 25.01.2024. Despite such a vivid order and caution of absolute last and final opportunity, the petitioner did not

bother to pay heed and protect his rights by appearing in person before the trial Court and producing his evidence or submitting reasonable and sufficient cause for adjourning the case, which was necessary and sine qua non for adjournment as required under Order XVII, Rule 1(1), **The Code**, which is reproduced infra:

‘1. Court may grant time and adjourn hearing. (1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.’

Perusal of the order sheet maintained by the trial Court goes to make it diaphanous that the adjournment(s) already sought were also without submitting any reasonable and sufficient cause, however, the trial Court took a lenient view and afforded the petitioner opportunities to produce his evidence but he failed to avail the same. Even the trial Court proceeded to impose cost of adjournment as enunciated under Rule (2) of Order XVII, **The Code** but, as observed above, even then the petitioner did not bother either to appear before the trial Court, pay cost(s) or to produce his evidence, which would automatically lead the trial Court to proceed with the matter as provided under Rule (3) of **The Code** which reads:

‘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 witness, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.’

Though, it is a settled law that evidence of a party cannot be closed under Order XVII, Rule 3, C.P.C for non-production of evidence where the case on the previous date was not adjourned at the request of such party. For the application of Rule 3 the following conditions must co-exist: a). Adjournment must have been granted to the party at his request; b). It must have been granted to it for the purposes mentioned in the rule 3; c). The party who has taken the time defaulted in doing the act - for which he took the time from the court; d). The party must be present or deemed to be present before the court; e). That there must be some material on record for decision of the case on merits

and; f). That the court must decide the suit forthwith that is within a reasonable time. However, in the instant case, 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 proceed 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, as 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 caution 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

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

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 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 judgment² 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:-
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

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

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 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.'

This Court in judgment of Duniya Gul³ has invariably held:

"7.---In our view, it is imperative for the court to exercise vigilance and refrain from granting adjournments so liberally and without any compelling reasons. Such a cautious approach is necessary to prevent abuse of the legal system, ensure a fair and timely resolution of cases, and optimize the use of judicial resources. In this regard, the Code of Civil Procedure, 1908 ("C.P.C.") under Order XVII, Rule 3, empowers the court to proceed to decide the suit forthwith if a party, to whom time has been granted, fails to produce evidence, secure the attendance of witnesses, or perform any other act necessary for the further progress of the suit. For convenience, the said Rule 3 is reproduced hereunder 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,

³ Duniya Gul and another Vs. Niaz Muhammad and others' (PLD 2024 Supreme Court 672)

notwithstanding each default, proceed to decide the suit forthwith.

"8.--Recently, the above provision of law was thoroughly considered and deliberated upon by this Court in the case of Moon Enterpriser CNG Station, Rawalpindi v. Sui Northern Gas Pipelines Limited through General Manager, Rawalpindi, and another (2020 SCMR 300). The Court, after considering the case law available on the subject, held that the following two conditions must be satisfied before applying the above penal provision to close the right of a party to produce evidence:

i. that time must have been granted at the request of a party to the suit to adduce evidence 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. that the same party on the date which was fixed as the last opportunity fails to produce its evidence.

9.....

10. It is relevant to observe here that when the last opportunity to produce evidence is granted and the party has been duly warned of the consequences, the court must execute its order consistently and strongly, without exceptions. Such a measure would not only realign the system and reaffirm the authority of the law but also curb the trend of seeking multiple adjournments on frivolous grounds, which serve to needlessly prolong and delay proceedings without valid or legitimate justification. Moreover, when the court issues an order providing the final chance, it not only issues a judicial order but also extends a commitment to the parties that no further adjournments will be permitted for any reason. The court must stand by its order and uphold its commitment, leaving no room or option for any alternative action.'

Besides, this Court in recent judgment⁴ 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. Moreover, Rule 15 Part H, Volume I of High Court Rules and Orders, adumbrates:

Adjournments for evidence -- *It has been observed that a number of Courts grant an adjournment merely because the party at fault is prepared to pay the costs of adjournment. Subordinate Courts should bear in mind that the offer of payment of the costs*

⁴ Lutfullah Virk v. Muhammad Aslam Sheikh (PLD 2024 SC 887)

of adjournment is not in itself a sufficient ground for adjournment. The provisions of Order XVII, Rule 3, also deserve notice in this connection. If a party to a suit to whom time has been granted for a specific purpose as contemplated by Order XVII, Rule 3, Civil Procedure Code, fails to perform the act or acts for which time was granted without any good cause the rule gives the Court discretion to proceed to decide the suit "forthwith" i.e., without granting any adjournment. In such cases a further adjournment should not ordinarily be granted, merely because offer is made for payment of costs. In some Courts it is apparently assumed that if such an adjournment is not granted the case will be remanded by an Appellate Court. There are, however, no valid grounds for this assumption. If the record makes it clear that a further adjournment has been refused because of the negligence of the party concerned, such refusal would not in itself justify an Appellate Court in remanding the case. An adjournment granted otherwise than on full and sufficient grounds is a favour and in civil suits favour can be shown to one party only at the expense of the other. (Underlined for emphasis)

5. In view of the above discussion, we find no illegality in the impugned order passed by the High Court as well as judgments and decrees rendered and handed down by the Courts below, warranting interference by us at this stage.

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

Judge

Judge

Lahore
27.03.2025
'Approved for reporting'
(M.A.Hassan)