

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Muhammad Shafi Siddiqui

Civil Petition No.473-K/2023

Against the judgment dated 27.01.2023 passed by High Court of Sindh, Karachi in IInd Appeal No.132 of 2019

M Muhammad Feroz-ud-din Hilali ...Petitioner(s)

Versus

Nadir & others ...Respondent(s)

For the Petitioner(s): Ch. A. Rasheed, ASC

For the Respondent(s): Mr. Muhammad Aziz Khan, ASC
Mr. K.A. Wahab, AOR.

Date of Hearing: 25.03.2025

O R D E R

Muhammad Shafi Siddiqui, J.- A complaint under the provisions of Illegal Dispossession Act, 2005 was filed by the petitioner/applicant which was dismissed by the District Judge vide order dated 22.10.2010. After the dismissal of the said application a suit bearing No.833 of 2016 was filed before the trial Court which was dismissed vide judgment dated 17.04.2017. The said judgment was then impugned by the petitioner/plaintiff before the First Appellate Court in Civil Appeal No.84 of 2017 which appeal was also dismissed vide judgment dated 13.04.2019 and consequently the petitioner filed Second Appeal under section 100 CPC before High Court which too was dismissed on 27.01.2023.

2. The two forums of different jurisdiction have concluded against the petitioner i.e. the complaint under the provisions of Illegal Dispossession Act, 2005 was dismissed by District Judge followed by the dismissal of the suit on the original side along with First Appeal and Second Appeal accordingly.

3. At the very outset the scope of Section 100 CPC and that too against the concurrent findings of the original Civil Court and the first Appellate Court is limited. The argument of the counsel for the petitioner was that the provisions of Order XVII Rule 3 CPC were misapplied to decide the lis and per learned counsel the trial Court failed to record evidence of the petitioner.

4. The judgment of the Senior Civil Judge/trial Court was passed on 17.04.2017 after dismissal of the adjournment application. The application was dismissed after recording the reasons that on the previous date (previous to the dismissal of last adjournment application) the petitioner also moved an adjournment application which was allowed as a last chance, despite availing earlier opportunities too. On the fateful date neither the petitioner being plaintiff in the suit nor his counsel appeared but an adjournment application was sent stating that the petitioner was suffering from fever. On the same day after dismissal of the adjournment application, the judgment was announced and the suit of the petitioner was dismissed being devoid of any evidence. In support of the pleadings the first and second Appellate Court formed a similar view as no indulgence was required.

5. Order XVII Rule 3 CPC is triggered when any party fails to produce evidence and the Court in that eventuality may, notwithstanding such default, proceed to decide the suit forthwith. The petitioner being aggrieved of such decision under order XVII Rule 3 CPC preferred an appeal but has not taken the ground that under the given circumstances Order XVII Rule 3 CPC was misapplied.

6. The solitary ground argued by the counsel for the petitioner was that after dismissal of the adjournment application on 17.04.2017 the side of the petitioner, being plaintiff in the suit, was not closed. We have perused the judgment of the trial Court and finds that indeed, by an order an adjournment application was dismissed but insofar as closure of the

side for recording of evidence is concerned that was clarified in the judgment. Besides, this was nowhere pleaded either in the first appeal or in the second appeal, hence a new ground is not open for indulgence.

7. We do not find this to be a cause to interfere with the concurrent findings of three Courts below who have recorded the non-serious attitude of the petitioner in recording the evidence on a number of occasions, particularly when the petitioner has failed to point out if he has categorically and specifically taken this ground before the two appellate forums below. Consequently petition merits no consideration and the same is accordingly dismissed and leave refused.

Judge

Judge

Announced in open Court on _____.03.2025.

Judge

Karachi

"Not Approved for reporting"