SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Amin-ud-Din Khan
Mrs. Justice Ayesha A. Malik

C.P. 3436-L/2022 and C.P. 3437-L/2022
(Against the consolidated order of the Lahore High Court, Lahore, dated 07.12.2022, passed in C.Rs. No.76624 and 76628 of 2022)

Imran Ahmad Khan Niazi (*In both cases*)

..... Petitioner

Versus

Main Muhammad Shahbaz Sharif (*In both cases*)

..... Respondent

For the petitioner: (*In both cases*)	Syed Ali Zafar, ASC. Mian Muhammad Kashif, ASC. Assisted by: Mr. Imran Iqbal, Advocate.
For the respondent: (*In both cases*)	Mr. Mustafa Ramday, ASC. Assisted by: Ms. Zoe K. Khan, Mr. Akbar Khan, Mr. Saad Sibghatullah, Mr. Asfand Mir, Ms. Mahnoor Ahmed and Mr. Bakhtayar Malik, Advocates.
Date of hearing:	29.12.2022

ORDER

Syed Mansoor Ali Shah, J.- (*For himself and Amin-ud-Din Khan, J.*) Through the present petitions, the petitioner seeks leave to appeal against a consolidated order of the Lahore High Court, dated 07.12.2022 ("impugned order"), whereby his two revision petitions filed against the orders of the trial court, dated 20.10.2022 and 24.11.2022, have been dismissed. The trial court had, by its order dated 20.10.2022, dismissed the objections (application) of the petitioner for rejection of the interrogatories of the respondent and directed him to submit the answers to those interrogatories and by its order dated 24.11.2022, struck out the right of defence of the petitioner due to non-submission of the answers to the said interrogatories.

2. Briefly, the facts of the case are that the respondent instituted a suit for recovery of damages against the petitioner, on 07.07.2017, alleging the commission of his defamation by the petitioner. The petitioner filed his written statement, on 27.07.2021. After the close of the pleadings, the trial court fixed the case for pre-trial proceedings of

discovery and inspection under Order XI of the Code of Civil Procedure 1908 (“CPC”). Both the parties delivered their respective interrogatories: the respondent, on 02.02.202 and the petitioner, on 03.02.2022. The respondent later withdrew some questions and delivered the amended interrogatories, with permission of the trial court, on 08.03.2022. The respondent filed the answers to the interrogatories of the petitioner, on 16.03.2022. The petitioner, however, filed objections (application) for rejection of the interrogatories of the respondent, on 09.05.2022, instead of filing the answers thereto.

3. The trial court observed that an application for rejection of the interrogatories could be filed under Rule 7 of Order XI, CPC within seven days after service of the interrogatories, while the petitioner had first sought several adjournments for submitting the answers to the interrogatories and then filed such application (objections) after the lapse of about two months without any lawful justification and without seeking condonation of the delay. With these observations, the trial court overruled the objections of the petitioner and directed him to submit his answers to the interrogatories of the respondent, vide its order dated 20.10.2022. The petitioner was, thereafter, provided with several opportunities to file the answers to the interrogatories, but he failed to avail them. Consequently, the trial court struck out the right of defence of the petitioner under Rule 21 of Order XI, CPC, vide its order 24.11.2022, due to his non-submission of the answers to the said interrogatories. The petitioner challenged both the orders of the trial court by filing two revision petitions in the Lahore High Court. After examining the record of the proceedings of the trial court, the High Court observed that the petitioner had failed to point out any illegality or material irregularity, or any jurisdictional defect, calling for interference in the orders passed by the trial court, in the exercise of its revisional jurisdiction. With these findings, the High Court dismissed both the revision petitions by the impugned order and upheld the orders of the trial court. Hence, the petitioner has filed these petitions for leave to appeal.

4. The learned counsel for the petitioner has mainly contended that the trial court did not perform its duty, under Rule 1 of Order XI, CPC, to examine the interrogatories of the respondent for determining whether or not they were relevant to the case; that the time of seven days mentioned in Rule 7 of Order XI, CPC for making an application for

setting aside the interrogatories is not mandatory; that the trial court had itself been extending the time for submitting the answers to the interrogatories, therefore, it could not have penalised the petitioner for its own acts; that before taking any penal action under Rule 21 of Order XI, there must be an order of the court, under Rule 11 of Order XI, requiring answers to the interrogatories, but no such order had been passed by the trial court in the present case; that the penal action of striking out the right of defence for non-submission of the answers to the interrogatories can be taken by a court only on an application of a party, not *suo motu*, and no such application had been filed by the respondent in the present case; that the penal provisions of Rule 21 of Order XI are not to be invoked lightly and before applying them an opportunity should be granted to do the needful, but no such opportunity was granted by the trial court to the petitioner in the present case; and that the technicalities should not be allowed to defeat justice, therefore, the petitioner may be provided with an opportunity to file the answers to the interrogatories of the respondent, in the interest of justice.

5. On the other hand, in addition to refuting the contentions of the petitioner, the learned counsel for the respondent has taken us through the record of the proceedings of the trial court, to submit that the conduct of the petitioner had remained contumacious throughout every stage of the proceedings, as much as he filed the written statement on 27.07.2021, after a period of about four years since his appearance in the suit on 09.09.2017, which was otherwise to be filed within thirty days from such appearance under Rule 1 of Order VIII, CPC; that in the proceedings so far conducted in the trial court, the petitioner has sought eighty (80) adjournments; that the trial court had committed no illegality or material irregularity in making the orders dated 20.10.2022 and 24.11.2022, as has been observed by the High Court in the impugned order, and the revision petitions of the petitioner have rightly been dismissed by the High Court.

6. We have considered the contentions of the learned counsel for the parties, read the cases cited by them and examined the record of the case.

7. As the jurisdiction of this Court under Article 185(3) of the Constitution of the Islamic Republic of Pakistan 1973 to grant the leave

to appeal is discretionary,[1] the conduct of a petitioner has a substantial bearing on the question of granting or declining such leave to him.[2] The conduct of a party is also material for the purpose of exercising the court's discretion under Rule 21 of Order XI, CPC: the court takes the penal action of dismissing the suit of the plaintiff or striking out the defence of the defendant when the party concerned is guilty of contumacious conduct by disregarding the specific order of the court, for compliance of which the court has granted a reasonable time and a sufficient opportunity.[3] However, it is not only a deliberate failure to comply with a specific order of the court by a party that is regarded as his contumacious conduct but a series of separate inordinate delays caused by him at different stages of the proceedings of the case is also a convincing proof of such conduct.[4]

8. In light of the above principles, we have gone through the copies of the complete order sheet of the trial court submitted on behalf of the respondent in support of the contention that the conduct of the petitioner has remained willfully contumacious and disobedient throughout the proceedings of the case in the trial court. We have noted that the suit was instituted by the respondent, on 07.07.2017. The petitioner appeared in the suit through his counsel, on 09.09.2017 and was provided with two opportunities, on his request, to submit the written statement within a period of thirty days as per Rule 1 of Order VIII, CPC. On 09.10.2017, when the case was fixed for filing of written statement as a second opportunity within the permissible time limit of thirty days, the petitioner instead of presenting his written statement filed an application under Rule 10 of Order VII, CPC for returning the plaint to the respondent on the ground of lack of territorial jurisdiction of the trial court. The respondent filed his written reply to that application on the very next date, i.e., on 19.10.2017. Thereafter, several opportunities were given to the petitioner for arguments on the said application till 29.09.2018 during the period of about one year; many of

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[1] Noora v. State PLD 1973 SC 469; Pakistan v. Faizan 1983 SCMR 413; Bilqis v. Fazal 1987 SCMR 1441; Haider v. Manzur 1989 SCMR 1133; Amir v. Dad PLD 1990 SC 1078; State v. Akbar 1992 SCMR 964; Nawaz v. Hameed 1993 SCMR 1902; Seamlen Pipe Industries v. Security Leasing Corporation 2002 SCMR 1419; Sharif v. Hamayun 2003 SCMR 1221; Bank of Punjab v. Shahzad 2006 SCMR 1023; Ilahi v. Altaf 2011 SCMR 513; Ghulam Rasool v. State PLD 2022 SC 806.

[2] Tilawatunnisa v. Settlement Commissioner 1978 SCMR 225; Noor Khan v. M.B.R. 1984 SCMR 681; Zahida v. State 1984 SCMR 687; Deen Carpets v. I.T.O. PLD 1989 SC 516; Hassan Bano v. Mumtaz PLD 1989 SC 346; British Biscuits Company v. Atlas Investment Bank 2005 CLD 674; Ali Shan v. Essem Hotel 2007 SCMR 741; Kamal v. Govt. of N.W.F.P. 2010 SCMR 1377.

[3] Babbar Sewing Machine Company v. Trilok Nath AIR 1978 SC 1436; U.B.L. v. Yousuf 1988 SCMR 82.

[4] Culbert v. Stephen G. Westwell & Co [1993] PIQR 54; Grovit v. Doctor [1997] 1 All ER 417, Arbuthnot Latham Bank v. Trafalgar Holdings [1998] 2 All ER 181; Choraria v. Sethia [1998] EWCA Civ 24 = [1998] Lexis Citation 20.

them were with warnings of “last and final” and “absolute last and final” opportunities. On 29.09.2018, instead of advancing arguments on his application under Rule 10 of Order VII, the petitioner made another miscellaneous application under Rule 16 of Order XI, CPC for the production of certain documents by the respondent. In the next seven months, the petitioner was provided with several opportunities to advance arguments on the said applications, again with warnings of “last and final” and “absolute last and final” opportunities; which were not advanced and after protracting the proceedings of the case for about seven months, the application under Rule 10 of Order VII was withdrawn by the petitioner on 04.05.2019. Thereafter, the hearing of the case was adjourned on several dates for arguments on the application of the petitioner under Rule 16 of Order XI, CPC, for a period of about six months. On 30.10.2019, the respondent filed two applications: the one under Rule 10 of Order VIII, CPC for closing the right of the petitioner to file his written statement and the second under Section 151, CPC read with Section 14 of the Defamation Ordinance 2002 for the early decision of the suit. Again, the petitioner was provided with several opportunities to file written replies to the said two applications of the respondent, with warnings of “last and final” and “absolute last and final” opportunities, which were filed on 18.02.2020 after delaying the proceedings of the case on this matter for a period of about four months. After this, the petitioner was provided with several opportunities to advance arguments on the said applications of the respondent as well as on his own application under Rule 16 of Order XI, CPC till 24.04.2021, again with warnings of “last and final” and “absolute last and final” opportunities. The arguments on the application of the petitioner under Rule 16 of Order XI, CPC were heard on 24.04.2021 and the said application was dismissed by the trial court on 26.04.2021. In the next about three months, the petitioner was provided with nine opportunities to file his written statement, again with warnings of “last and final” and “absolute last and final” opportunities. At last, the petitioner filed his written statement on 27.07.2021 after a period of about four (4) years since his appearance in the suit on 09.09.2017, which should have been filed by him till 09.10.2017 within a period of thirty days from the day of his appearance in the suit as per Rule 1 of Order VIII, CPC. After filing the written statement, the petitioner first pressed before the trial court to decide upon his objection taken in the written statement as to the territorial jurisdiction on three dates of hearing, and then on the fourth

date, i.e., 22.09.2021, his counsel made the statement that the said objection may be decided after recording evidence. The trial court, on the said date, also disposed of the above-mentioned two applications of the respondent, with the observations that as the petitioner had filed his written statement, the application for closing his right to file the written statement became infructuous and that from then onward, short dates would be fixed in the case to decide it expeditiously.

9. The above summary of the proceedings of the case in the trial court made during a period of four years, from the date of appearance of the petitioner on 09.09.2017 till 22.09.2021, gives credence to the contention of the respondent that the conduct of the petitioner has remained contumacious throughout the proceedings of the case in the trial court. The way the proceeding was prolonged by the petitioner at every stage of the case in the trial court, to delay the decision of the case, is more than evident.

10. Before proceeding further to examine the conduct of the petitioner during the proceeding of delivering and answering the interrogatories under Order XI, CPC, we think it appropriate to observe here that although we are cognizant of the fact that the judges of the trial courts perform the onerous task of dispensing justice at the grassroots in the stressful and challenging conditions and in a difficult and demanding environment,[5] the leniency shown on their part in the matter of accommodating unjustified requests for adjournment, even at the cost of disregarding the timelines provided in the relevant laws, is unwarranted. No doubt, all judges including the trial court judges should be courteous and polite while interacting with the members of the bar and the litigant public appearing before them but at the same time, they must be firm in conducting the proceedings of the cases in accordance with law. A "peremptory order"[6] of the court, which specifies a time to do a certain act in the proceedings of the case with a warning of last opportunity, must be followed by the legal consequences prescribed by the relevant law for its non-compliance. Orders granting repetitive adjournments with warnings of "last and final" and "absolute last and final" opportunity

[5] Hasnain Raza v. Lahore High Court PLD 2022 SC 7.

[6] As per the definition avaialable online at https://uk.practicallaw.thomsonreuters.com, the term "Peremptory Order" means a final order or direction of the court, which specifies a time for compliance and is usually made following failure by a party to adhere to the court's procedural orders. The word "Peremptory" is defined in Black's Law Dictionary (10th Edt.) p. 1318 and Aiyar's Advanced Law Lexicon (3rd Edt.) p. 3531, as final, absolute, conclusive, imeprative, decisivie and not admitting of question, delay or reconsideration.

become meaningless and shatter the confidence of the litigant public in the court orders and consequentially weaken the authority and fiat of the court. Toothless court is the worst form of injustice. A court, no matter how high or low in the pyramidical court system, is still a court of law and must not shy away from exercising its authority under the law. Effective and efficient court house is the basic foundation of rule of law in any constitutional democracy. In this regard, we fully agree and endorse the following observations of a two-member bench of this Court made in the *Moon Enterpriser case*[7] in regard to an order for producing evidence and are of the view that these observations apply not only to the orders of producing evidence but also to all types of the court orders:

> 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.

The inordinate delay in the conclusion of cases is the main challenge faced by the judiciary, which has a devastating effect on the credibility of the justice system and the public confidence reposed in it. A radical approach is required, as said by Lord Griffiths,[8] to tackle the problem of delay in the litigation process by enforcing a court-controlled case management system, which should ensure that once a litigant has entered the litigation process, his case proceeds in accordance with a timetable as prescribed by rules of court. Litigants and their legal advisors must recognise that any delay, which occurs due to non-compliance with the prescribed timetables, is assessed not only from the point of view of the prejudice caused to a particular litigant in whose case it occurs but also in relation to the negative effect it has on the overall administration of justice. It is in the interests of litigants as a whole that the court's time is not unnecessarily absorbed in dealing with “satellite litigation” which failure to comply with the prescribed

[7] Moon Enterpriser v. SNGPL 2020 SCMR 300.
[8] Department of Transport v. Chris Smaller Transport [1989] 1 All ER 897.

timetables creates.[9] The rules containing time limits for doing the specified acts necessary for the progress of a case are intended to accomplish the constitutional goal of fair trial and expeditious dispensation of justice by concluding the litigation process within a reasonable timeframe.[10] These rules should, therefore, be observed.

11. To tackle the problem of delay in the process of civil litigation, the Lahore High Court, in the exercise of its rule-making power under Section 122 of the CPC, has made substantial changes in the rules of civil procedure contained in the First Schedule to the CPC in 2018, on several matters including the process of interrogatories. “Interrogatories”, i.e., the written questions, are delivered by one party to his opponent party for answering them on oath in the form of an affidavit. The interrogatories differ from the pleadings: the object of the pleadings is to ascertain what the issues are, while the main object of the interrogatories is to save time and expense by enabling a party to obtain an admission of certain facts from his opponent, which narrows down the issues for trial and thus reduces the burden of proof.[11] However, as a party need not mention in his pleading the evidence by which he is to prove the facts asserted by him for making his claim or defence, a party cannot ask through an interrogatory his opponent party as to what evidence the latter would produce in support of his claim or defence.[12] The interrogatories when delivered by the parties to each other at a pretrial stage of the case, on the facts which are directly in issue or on such facts the existence or non-existence of which is relevant to the existence or non-existence of the facts directly in issue, can obviate the expensive and time-consuming process of proving certain facts, dispose of some issues even before trial and lessen the number of witnesses to be recorded in the case.[13] The fair use of the process of interrogatories, therefore, ultimately results in an overall shortening of the trial and thus helps achieve the constitutional goal of the inexpensive and expeditious dispensation of justice. Interrogatories therefore play a vital role in making the civil trial court system more effective and efficient.

12. Turning to the examination of the conduct of the petitioner during the proceeding of delivering and answering the interrogatories

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[9] Arbuthnot Latham Bank v. Trafalgar Holdings [1998] 2 All ER 181 per Lord Woolf, MR.
[10] The Constitution of the Islamic Republic of Pakistan 1973, Articles 10A and 37(d).
[11] Attorney-General v. Gaskill (1882) 20 Ch. D. 519; Ganga Devi v. Krushna Prasad AIR 1967 Ori 19.
[12] Javed Akhtar v. Lana Publishing Company AIR 1987 Bom 339.
[13] McCabe v. Irish Life Assurance [2015] 1 IR 346; Jamaitrai v. Motilal AIR 1960 Cal 536.

under Order XI, CPC in the present case, we find it appropriate to first cite here the relevant Rules of Order XI, CPC:

> **Rule 1. Discoveries by interrogatories.**
> The Court shall direct the parties to deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties stating clearly which of such interrogatories each of such person is required to answer, provided that the Court may reject an interrogatory or part thereof which, in its opinion, is not relevant to the case.
>
> *(as amended by the Lahore High Court in 2018)*
>
> **Rule 2. Communication of interrogatories.**
> On receipt of the interrogatories under rule 1, the Court shall deliver the interrogatories to the concerned person for submitting the answer within such time as the Court may specifiy.
>
> *(as amended by the Lahore High Court in 2018)*
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> **Rule 6. Objections to interrogatories by answer.**
> Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.
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> **Rule 7. Setting aside and striking out interrogatories.**
> Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.
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> **Rule 8. Affidavit.**
> The interrogatories shall be answered by an affidavit to be filed within the time specified by the Court.
>
> *(as amended by the Lahore High Court in 2018)*
>
> **Rule 11. Order to answer or answer further.**
> Where any person interrogated submits an insufficient or an evasive answer, the Court may require him to submit the proper answer within the time specified by the Court.
>
> *(as amended by the Lahore High Court in 2018)*
>
> **Rule 21. Noncompliance with order for discovery.**
> Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly.

The perusal of the order sheet of the trial court shows that on 05.01.2022, the trial court directed the parties to deliver their interrogatories, in accordance with Rule 1 of Order XI, CPC. Both the parties delivered their respective interrogatories: the respondent, on 02.02.202 and the petitioner, on 03.02.2022. The respondent later withdrew some questions and delivered the amended interrogatories, with permission of the trial court, on 08.03.2022 and the hearing was adjourned to 16.03.2016 for filing answers by the parties to the interrogatories of each other. The respondent filed the answers to the interrogatories of the petitioner, on 16.03.2022, while the petitioner

requested another opportunity, which was granted and the hearing of the case was adjourned to 26.03.2022. The petitioner did not file his answers to the interrogatories till that date and the hearing was adjourned to 09.04.2022. On 09.04.2022, 20.04.2022 and 26.04.2022, the petitioner requested further opportunities for filing the answers to the interrogatories, which were accordingly granted to him and in the order dated 26.04.2022, the trial court also made a warning of last opportunity to file the answers to the interrogatories and adjourned the hearing to 09.05.2022. On 09.05.2022, instead of filing the answers for which the petitioner had earlier been requesting opportunities, the petitioner filed the objections (application) for rejection of the interrogatories of the respondent. The respondent filed his written reply to the said objections (application) of the petitioner, on 14.05.2022. On 21.05.2022, 30.05.2022, 08.06.2022, 05.07.2022, 27.07.2022 and 05.10.2022, the hearing of the case was adjourned on request of the petitioner for arguments on the said objections (application). The arguments were heard on 19.10.2022 and vide its order dated 20.10.2022, the trial court overruled the objections of the petitioner and directed him to submit his answers to the interrogatories of the respondent, with the observations that an application for rejection of the interrogatories could be filed under Rule 7 of Order XI, CPC within seven days after service of the interrogatories, while the petitioner had first sought several adjournments for submitting the answers to the interrogatories and then filed such application (objections) after the lapse of about two months without any lawful justification and without seeking condonation of the delay.

13. The above survey of the proceedings of the trial court as to delivering and answering the interrogatories by the parties under Order XI, CPC, from 05.01.2022 to 20.10.2022, shows the same delaying tactics of the petitioner by which he had been hindering the progress of the suit earlier. The learned counsel for the petitioner has contended that the time of seven days mentioned in Rule 7 of Order XI, CPC is not mandatory rather it is directory, and that strict compliance is required only of a mandatory provision while substantial compliance with a directory provision is sufficient.

14. It is true that the provisions of a procedural law are ordinarily directory in nature and are construed liberally to advance the cause of justice, as their main purpose is to facilitate the administration

of justice. The same purposive approach is to be adopted while construing and applying a procedural provision which provides a timeframe for doing a certain act necessary to the further progress of the case. The main purpose of providing a timeframe in procedural rules is to expedite the hearing and conclusion of the case and to avoid unnecessary adjournments. Such rules are, therefore, to be adhered to for giving effect to the purpose of their making, else the non-compliance therewith would frustrate the objective of expeditious decision of the cases sought to be achieved by the legislature or the rule-making authority, as the case may be. The procedural rule prescribing the timeframe for doing a certain act in the course of the proceedings of a case should, therefore, be followed as a rule and the departure therefrom can be made only as an exception in exceptional circumstances beyond the control of the party concerned. The court may also ask for the filing of an affidavit or the necessary documents, depending on the facts and circumstances of the case, in support of those exceptional circumstances.[14]

15. In the present case, no request was made by the petitioner under Section 148 CPC seeking an extension of the time for filing his objections (application), or condonation of the delay as observed by the trial court in its order dated 20.10.2022.

16. As for his contention that the trial court did not perform its duty of determining the relevancy of the interrogatories under Rule 1 of Order XI before delivering the same under Rule 2 for submitting the answers, we find that there is nothing on record from which it can be inferred that the trial court did not make such examination of the interrogatories of the parties before delivering the same to each other and requiring them to submit the answers thereto. The presumption of regularity is attached to judicial proceedings; therefore, in absence of the contrary material, it is to be presumed that the trial court delivered the interrogatories and required submission of their answers after making such examination. Secondly, if it is assumed that the trial court did not make such examination of the interrogatories, even then it has no legal effect and consequences as the parties still had ample opportunity to raise objections to the interrogatories of each other under Rule 6 or 7. The power of the trial court under Rule 1 to examine the interogatorries before delivering the same to the party concerned under Rule 2 and to

[14] Kailash v. Nanhku AIR 2005 SC 2441.

reject any irrelevant interrogatory at that stage, is permissive, not obligatory. The non-exercise of which does not vitiate the order of the court delivering the interrogatories to the party concerned under Rule 2 for submitting the answers. It is a matter of common knowledge that our trial courts are overburdened with high pendency of cases and therefore cannot be expected, in the prevailing circumstances, to make such examination of the interrogatories in every case, under Rule 1. Rather, it appears to us to be more practicable in the prevailing circumstances and in our system of administration of civil justice, which is primarily adversarial, that the party concerned should invite the attention of the trial court for such examination, either (i) by making an application under Rule 7 of Order XI if all or most of the interrogatories delivered appear to be irrelevant by specifying the particular objection taken to each of such interrogatories separately, or (ii) by answering those interrogatories which he thinks are relevant and taking objection to those which he thinks are irrelevant as per Rule 6 of Order XI, CPC. In the present case, the petitioner opted for the first mode but not in a *bona fide*, proper and prescribed manner, as he first lingered on the matter by requesting several opportunities to submit the answers to the interrogatories and then instead of submitting the answers filed objections (application) for rejection of the interrogatories after a period of about two months instead of the prescribed period of seven days, and that too without seeking an extension of the time under Section 148 of the CPC by showing sufficient reason (exceptional circumstance), nor did he specify the particular objection to each of the interrogatories separately rather made general objections to all of them jointly, though he attempted to fill up the lacuna in his written argruments submitted on 05.07.2022 which too were after the lapse of the prescribed time under Order XI Rule 7 CPC. The adjournments sought by the petitioner for advancing arguments on his own objections (application) also strengthen the impression that in making the said objections he was acting in furtherance of his design to prolong the proceedings of the case on one pretext or another. Thus, we do not see any illegality or material irregularity in the exercise of its jurisdiction by the trial court in overruling the objections of the petitioner and directing him to submit the answers to the interrogatories of the respondent *vide* its order dated 20.10.2020, which may have called for interference by the High Court in its revisional jurisdiction under Section 115, CPC.

17. Proceeding further to the examination of the conduct of the petitioner after the order of the trial court, dated 20.10.2022, we have noted that vide its order dated 20.10.2022, the trial court directed the petitioner to submit his answers to the interrogatories of the respondent till 26.10.2022. On 26.10.2022, 08.11.2022 and 17.11.2022, three further opportunities were given to the petitioner, on requests of his counsel, to submit the answers to the interrogatories of the respondent. In its order dated 17.11.2022, the trial court made a clear warning of the last opportunity and also specified the consequence of non-compliance with the court order, thus:

> At request of learned counsel for the defendant, one more adjournment is hereby granted to submit replies by the defendant regarding concerned interrogatories of the plaintiff's side. File be put up on **24.11.2022** for submission of requisite replies by the defendant's side regarding concerned interrogatories of the plaintiff in the form of one more opportunity. It is hereby clarified that in case of non-submission of requisite replies by the defendant's side regarding concerned interrogatories of the plaintiff's side on the next date, the right of defence of the defendant shall be struck out.

Despite the above warning of the trial court, the petitioner did not submit his answers to the interrogatories of the respondent on 24.11.2022, rather he made an application for further adjournment this time on the ground that he intended to file a revision petition against the order of the trial court dismissing his objections (application) for rejection of the interrogatories. The ground pleaded for seeking adjournment was misconceived and untenable, as on the last four dates, the petitioner had been seeking adjournments for filing his answers to the interrogatories. The conduct of the petitioner was the same as it had been throughout the proceedings of the case and as was his previous conduct when at an earlier stage, he had filed the objections (application) for rejection of the interrogatories after seeking several opportunities for submitting his answers. The trial court rejected the application of the petitioner for further adjournment and struck out his right of defence, under Rule 21 of Order XI, vide its order dated 24.11.2022. In view of the noted facts and circumstances, we do not find any illegality or material irregularity in the exercise of its jurisdiction by the trial court in making the said order.

18. The learned counsel for the petitioner has contended that before taking any penal action under Rule 21 of Order XI, there must be an order of the court under Rule 11 requiring answers to the interrogatories, but no such order had been passed by the trial court in the present case. We are afraid, this contention is oblivious of the

substitution of Rules 2 and 11 of Order XI, CPC by the Lahore High Court amendments made in 2018, and the cases cited in support of the said contention are also not relevant, for the same reason. The expression, “any order to answer interrogatories”, used in Rule 21 of Order XI includes both orders of the court: (i) the order of the court made under the substituted Rule 2, requiring the first submission of the answer to the interrogatories, and (ii) the order of the court made under the substituted Rule 11, requiring submission of the proper answer, in case the first submitted answer is found insufficient or evasive. In the present case, the petitioner did not submit any answer to the interrogatories of the respondent in compliance with the order of the trial court made under Rule 2; therefore, there was no occasion for the trial court to make an order directing the pertitioner under Rule 11 for submitting the “proper answer.”

19. As far as the contention of the learned counsel for the petitioner that the penal action under Rule 21 of Order XI can be taken by a court only on an application of the party, not *suo motu*, and his reference to two judgments[15] of the High Courts of the neighbouring jurisdiction are concerned, we are of the considered view that the said contention is untenable and the said reference is inapt as the learned counsel has made the same without appreciating the changes made by the Lahore High Court in the rules contained in Order XI on the process of delivering interrogatories and requiring answers thereto. Through the Lahore High Court amendments, the role and importance of interrogatories in a civil trial has been enhanced by empowering the trial court to be more active and controlling in the matter of interrogatories: the newly inserted Rule 1 of the Order IX-A mandates the trial court to fix a day, after the close of the pleadings, for the proceedings of discovery and inspection under Order XI; the substituted Rules 1 and 2 of Order XI require the trial court to direct the parties to deliver their interrogatories and on receipt therof, to deliver the same to the party concerned for submitting the answers within such time as it may specify. In the wake of this paradigm shift in the civil procedure code, interrogatories have to be viewed as an essential constituent of civil trial. These amendments would be rendered useless if the trial court enjoys no power to enforce its order by first issuing the warning of the proposed penal action and then to take the said action if its order is not complied with despite that

[15] Abdul Aziz v. Raj Chhabra AIR 1968 All 119; Namita Dhar v. Amalendu Sen AIR 1977 Cal 187.

warning, without an application of the party. The trial court, in our opinion, does have the power to take the penal action on its own if its order is not complied with despite giving the warning of last opportunity for compliance. The interpretation put to the provisions of Rule 21 by the High Courts of the neigbouring jurisidiction is no more relevant in the Province of Punjab where the Lahore High Court has amended the overall scheme of the process of delivering interrogatories and requiring their answers.

20. Even otherwise, it has been held in one[16] of the cases referred to by the learned counsel for the petitioner, that the expression “apply” used in Rule 21 includes oral application (request) also, and the application need not be in the written form necessarily. In the present case, the respondent had opposed on several occasions the requests of the petitioner seeking adjournments for submitting answers to the interrogatories. Such opposition of the respondent amounts to his oral request (application) for taking penal action against the petitioner under Rule 21 for non-submission of the answers to the interrogatories, else there remains no meaning of that opposition of the respondent to the requests made by the petitioner for adjournments. The recording of the warning in its order dated 17.11.2022 by the trial court to strike out the right of defence of the petitioner in case he failed to submit his answers to the interrogatories of the respondent till the next date also shows the making of an oral request on behalf of the respondent for such penal action against the petitioner.

21. The contention of the learned counsel for the petitioner that the penal provisions of Rule 21 of Order XI are not to be invoked lightly and before applying them an opportunity should be granted to do the needful, but no such opportunity was granted by the trial court to the petitioner before applying them in the present case, is absolutely unsustainable, as the trial court had provided the petitioner with more than sufficient opportunities to submit his answers to the interrogatories of the respondent, before taking the penal action under Rule 21 of Order XI, CPC. Similarly, his contention that the trial court had itself been extending the time for submitting the answers to the interrogatories, therefore, it could not have penalised the petitioner for its own acts, appears to us to be completely untenable, as the trial court had been

[16] Abdul Aziz v. Raj Chhabra AIR 1968 All 119.

granting the adjournments on request of the petitioner, not because of its own reasons.

22. Lastly, the learned counsel for the petitioner has submitted that the technicalities should not be allowed to defeat justice, therefore, the petitioner may be provided with an opportunity to file the answer to the interrogatories of the respondent, in the interest of justice. We have thought over this submission deeply and come to the considered opinion that it cannot be entertained, especially in view of the overall conduct of the petitioner by which he had protracted the proceedings of the case at every stage in the trial court, to delay the decision of the case. The power of the trial court under Rule 1 of Order XVII of the CPC to grant an adjournment on being shown the sufficient cause is discretionary; therefore, an appellate court cannot interfere with the order of the trial court, either granting or refusing adjournment, unless it is found that the discretionary power has been exercised perversely or arbitrarily. We see no perversity or arbitrariness in the order of the trial court, dated 24.11.2022, rejecting the application of the petitioner for a further adjournment, rather find it completely reasonable and justified, as the ground pleaded for seeking adjournment was legally untenable and thus did not constitute a “sufficient cause” within the meaning of that term as used in Rule 1 of Order XVII and as more than sufficient opportunities (adjournments) had already been granted to the petitioner. Further, by accepting such a submission, we would be doing the same thing for which this Court has deprecated the trial courts in the *Moon Enterpriser case*[17] for granting further adjournments even after recording the warning of the last opportunity, by first giving last opportunity *(Akhri Mouqa)* then final last opportunity *(Qatai Akhri Mouqa)* and then absolute final last opportunity *(Qatai Qatai Akhri Mouqa)*. This Court has observed in the said case that the practice of granting adjournments in this manner amounts to making a mockery of the law and the court orders, and that such practice must be discontinued. We cannot, by accepting the submission, create a double standard: one for this Court and the other for the trial courts.

23. Having examined the contentions of the parties in the light of the record of the case, we find that the contentions of the learned counsel for the respondent are correct, that the conduct of the petitioner

[17] Moon Enterpriser v. SNGPL 2020 SCMR 300.

has remained willfully contumacious and disobedient throughout the proceedings of the case in the trial court, and that the trial court had not committed any illegality or material irregularity in the exercise of its jurisdiction by making the orders dated 20.10.2022 and 24.11.2022, therefore, the High Court has rightly declined to interfere with them in its revisional jurisdiction under Section 115, CPC. In addition to the said conduct of the petitioner that disentitles him for the indulgence of this Court in its discretionary jurisdiction under Article 185(3) of the Constitution, we find his petitions are without substance on merits as well. The present petitions are, therefore, dismissed and the leave to appeal, declined.

24. Before parting with the order, we find it necessary to observe that interrogatories serve as a useful tool to shorten litigation and reduces litigational expenses, However, the process of interrogatories has unfortunately been abused in the present case and infact misused to prolong the trial and add to the expenses. Such an abuse of the process of interrogatories has to be curbed with a heavy hand. The fair use of the process of interrogatories, as said by Justice Walsh,[18] should be encouraged, for it would result in considerable saving of time and money and thus be beneficial to the parties of the case as well as to the administration of justice in general. It is high time that our civil courts prove Justice Walsh right!

25. This is the majority view, on the basis whereof short order dated 29.12.2022 was passed, which, for completion of record, is reproduced hereunder:-

> For the reasons to be recorded later these petitions are dismissed and leave refused by a majority of two-to-one (Ayesha A. Malik, J., dissenting).

Judge

Lahore,
29th December, 2022. Judge

Approved for reporting.

Iqbal

[18] of the Supreme Court of Ireland in J&LS Goodbody v. Clyde Shipping Company (1967 – unreported) cited in McCabe v Irish Life Assurance [2015] 1 IR 346.

AYESHA A. MALIK, J.- I have had the opportunity of going through the majority judgment authored by Syed Mansoor Ali Shah, J., and agree with the conclusion drawn with respect to Civil Petition No.3436-L of 2022. However, after having perused the facts and record of Civil Petition No.3437 of 2022, I find myself in disagreement with the conclusion reached therein which finds that the conduct of the Petitioner was willfully contumacious and disobedient throughout the proceedings of the case in the trial and, therefore, warranted action under Order XI Rule 21 of the Code of Civil Procedure, 1908 (**CPC**) and further that the Lahore High Court, Lahore (**High Court**) rightly declined to interfere with the order of 24.11.2022 in its revisional jurisdiction.

2. The basic facts of the case have been narrated in paragraphs 2 to 5 of the majority's opinion, however, for the sake of easy reference, the essential facts are reiterated and divided into three parts.

(i) A suit for recovery of rupees ten billion as damages for defamation under Sections 4 and 9 of the Defamation Ordinance, 2002 (**Ordinance**) was filed by the Respondent against the Petitioner on 07.07.2017. The Petitioner entered appearance on 09.09.2017 and the case was fixed for filing of the written statement on 25.09.2017 and 09.10.2017. The written statement was not filed on either date. The Respondent objected to the fact that the Petitioner had not filed his written statement on 09.10.2017 within the 30 days requirement, instead the court granted time for submission of the written statement on 09.10.2017. From 09.10.2017 until 26.04.2021 there is no direction by the trial court to file the written statement. On 26.04.2021, 17.05.2021, 31.05.2021, 05.06.2021, 16.06.2021, 26.06.2021, 29.06.2021, 06.07.2021 and 16.07.2021 directions were given to file the written statement. On 17.05.2021 and 05.06.2021, the last and final opportunity was granted to the Petitioner for filing the written statement. It was

eventually filed on 27.07.2021 after a delay of four years.

(ii) During this four-year period, the Petitioner filed applications under Order VII Rule 10 CPC and Order XI Rule 16 CPC. The Respondent filed two applications; one, under Section 151 CPC read with Section 14 of the Ordinance for early decision in the suit, and second, under Section 151 CPC read with Order VIII Rules 1 and 10 CPC, for closing the Petitioner's right to file his written statement, respectively. The trial court proceeded on the various applications pending before it until 04.05.2019 when the application under Order VII Rule 10 CPC was withdrawn and then on 26.04.2021, the application under Order XI Rule 16 CPC was dismissed. On 22.09.2021, the Respondent's applications were disposed of. From 06.10.2021 to 16.11.2021, the case proceeded in the case management conference. On 16.11.2021 to 18.12.2021, the case proceeded for submission of Form No.13 and for examination of parties under Order X CPC. On 18.12.2021, the case was fixed for discovery and inspection under Order XI CPC and on 05.01.2022 the parties were directed to file their interrogatories.

(iii) The interrogatories were filed by the Petitioner and the Respondent, on 02.02.2022 and 03.02.2022, respectively. On 11.02.2022, the Respondent sought time to amend his interrogatories which amendment was allowed and consequently on 08.03.2022 the amended interrogatories were filed by the Respondent on which date the Petitioner was directed to file his reply to the interrogatories. After the first direction, the Petitioner sought three adjournments for filing his reply on 09.04.2022, 20.04.2022 and 26.04.2022, and filed objections to the interrogatories on 09.05.2022. The objections were overruled on 20.10.2022 on which date, the Petitioner was directed to file his reply to the

interrogatories. The Petitioner sought adjournments on 26.10.2022, 08.11.2022 and 17.11.2022 and his right to defence was struck out on 24.11.2022 under Order XI Rule 21 CPC.

3. Civil Petition No.3436 of 2022 was filed with respect to the order of 20.10.2022 whereby the objections of the Petitioner were overruled by the trial court. The trial court rejected the objections as the same were filed after the seven days period prescribed under Order XI Rule 7 CPC. I agree with the majority judgment regarding this matter to the extent that the Petitioner's objections were time barred, and therefore, the same were rightly dismissed.

4. The issue before the Court in Civil Petition No.3437 of 2022 is whether the trial court was justified in striking out the defence of the Petitioner under Order XI Rule 21 CPC, based on the non-compliance with its direction in the order dated 20.10.2022 to file answers to the interrogatories.

5. The impugned order dated 07.12.2022 of the High Court finds that the trial court has jurisdiction to strike out the right of defence of a defaulting party for non-compliance with the provisions of the law or the orders of the court and that such orders are necessary to prevent substantial or serious prejudice to the opposite party due to negligence or inexcusable delay. The argument of the counsel for the Petitioner is that the provisions of Order XI Rule 21 CPC are penal and before invoking the same, the court should satisfy itself that punitive action is necessary as the party has willfully disobeyed an order of the Court. That failure to comply with an order in genuine circumstances where adequate reasons are given does not amount to being willful and cannot be construed as a default under Order XI Rule 21 CPC. Further that the Court can condone the non-compliance *simpliciter* or else impose costs if need be and is not obligated to take penal action. He argued that since penal provisions contemplate severe consequences, discretion should be exercised cautiously as it affects the Petitioner’s constitutional rights to due process and fair trial. In support of this contention, reliance is placed on the case

reported as *Mirza Ali Khan v. Mst. Shahida Parveen and others* (**1992 SCMR 2112**). The counsel also argued that penalty for non-compliance with an order as per Order XI Rule 21 CPC must be strictly construed to be applied only in extreme cases where there is obstinacy, contumacy or a willful attempt to disregard the orders of the court. In the present case, there was a sufficient cause for the non-compliance which was neither intentional nor willful and was beyond the control of the Petitioner. He stated that the Petitioner on 03.11.2022, while leading a political rally, was shot at and was taken to the hospital where he was operated upon. The counsel further stated that this fact was shown on all national news channels and covered by the print media and was stated as the reason by the counsel of the Petitioner for the adjournments on 08.11.2022, 17.11.2022 and 24.11.2022. Learned counsel submitted that there was no willful attempt on the part of the Petitioner to disregard the order of the court as he was hospitalized and due to security reasons, his counsel was unable to contact him and obtain the reply and affidavit for filing answers to the interrogatories. He argued that these were genuine grounds for seeking the adjournments which were also accepted by the trial court, however, it gave insufficient time in circumstances, within which the reply could not be filed (from 08.11.2022 to 24.11.2022). He stated that striking out the right of defence of the Petitioner vide the order of 24.11.2022 which has been upheld by the High Court, amounts to a wrongful exercise of discretion as the settled principle of law is that *lis* should be decided on its merits and technicalities should not stand in the way of administration of justice.

6. The Respondent's counsel relied on the conduct of the Petitioner throughout the suit stating that the Petitioner resorted to delaying tactics by not filing the written statement within the prescribed 30 days and instead filed frivolous applications and sought unnecessary adjournments over a period of four years; that he changed his lawyers several times and thereby hampered the case from proceeding as per law. He argued that the Petitioner was obligated to file a reply to the interrogatories and was given sufficient opportunity to file his answers after which the court was

well within its discretion to regulate its proceedings and strike out the defence of the Petitioner for non-compliance with its orders.

7. Rule 21 of Order XI CPC is reproduced hereunder:

> *"21. Non-compliance with order for discovery. Where any party fails to comply with any order to answer interrogatories or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery of inspection may apply to the Court for an order to that effect and an order may be made accordingly."*

The said Rule prescribes penal consequences where a party fails to comply with an order to answer interrogatories, or for discovery or inspection of documents. This provision has two requirements: firstly, an order for the discovery of documents or the filing of answers to interrogatories must be made, and secondly, such an order must not be complied with. The provisions of this Rule impose a penalty for non-compliance with a court order such that the suit can be dismissed if it is the plaintiff or the defence can be struck out if it is the defendant. The consequence of non-compliance with an order of the Court directing for answers to the interrogatories, discovery or inspection is grave which is why the law is settled on this point that penal provisions should be strictly construed and used with caution where circumstances mandate the same (*Messrs United Bank Limited v. Yousuf Haji Noor Muhammad Dhadhi* (**PLJ 1987 SC 636**). What the Court is essentially looking for under Order XI Rule 21 CPC is a default on the part of the plaintiff or defendant to comply with its order to file its answer to the interrogatories or for discovery, or for inspection of documents. The test to ascertain whether there has been a default in compliance with an order of the Court is to see whether such default was done willfully. In this respect in the case reported as *M/s. Babar Sewing Machine Company v. Tirlok Nath Mahajan* (**(1978) 4 SCC 188**) the court elaborates that an order under Order XI Rule 21 CPC ought not to be made unless the court is satisfied that the party was willfully withholding information by refusing to answer interrogatories. The act of being willful means that it is

done deliberately and intentionally and cannot be something that is done by accident or inadvertently or for reasons beyond the control of the party. Essentially, it goes directly to the conduct of a person with reference to the order for filing the answers to interrogatories, or for discovery or inspection and the intent behind such conduct. The underlying consideration for the Court before invoking Rule 21 of Order XI CPC is to satisfy itself that non-compliance with its order was willful, deliberate and intentional, being contumacious. This Court in the case reported as *Messrs United Bank Limited* (*supra*) stated that the provisions of Order XI Rule 21 CPC being penal in nature are to be strictly construed and the same can only be invoked and penalty imposed on a party only if such party has failed to file an affidavit in spite of an order passed by the court to that effect. Thus, to invoke Order XI Rule 21 CPC there must be an order for compliance and there must be willful default in its compliance.

8. In the case before us, for the purposes of order 24.11.2022 where the right of the Petitioner's defence was struck out, the facts of the case do not establish that the Petitioner committed willful default or intentionally and deliberately disobeyed an order of the Court. The facts of the case make this position apparent. On 20.10.2022, the objections filed by the Petitioner against the interrogatories were dismissed and vide this order the Petitioner was directed to file his answers to the interrogatories. The next date of hearing was 26.10.2022 on which date the Petitioner sought an adjournment which was granted by the Court. The next date of hearing was 08.11.2022 on which date again an oral request for adjournment was made on the ground that the Petitioner was injured on account of the incident of 03.11.2022 and was hospitalized. This fact is recorded in the order of 08.11.2022 as being a ground for the grant of adjournment, in the following term:

> درخواست التوا پیش کی گئی ہے۔ جو اس طور منظور کی جاتی ہےکہ
> interrogatories مدعا علیہ کو برائے ادخال جواب متعلقہ ایک مزید
> موقع بتقرر 22-11-17 دیا جاتا ہے۔ سنایا گیا۔

The next date of hearing was fixed for 17.11.2022 when again a request for adjournment was made on the ground that the counsel for the Petitioner was not able to establish contact with the Petitioner due to his hospitalization and security concerns. Therefore, once again answers to the interrogatories could not be filed. This fact is also recorded in the order of 17.11.2022 in the following terms:

> *"Learned counsel for the defendant has requested for one more adjournment to submit replies of the concerned interrogatories of the plaintiff's side due to his non contact with the defendant. Learned counsel for the plaintiff has vehemently opposed the said request for adjournment with the submission that costs be imposed upon the defendant in case of adjournment. This court does not deem it proper to impose costs upon the defendant regarding adjournment sought by learned counsel for the defendant today. At request of learned counsel for the defendant one more adjournment is hereby granted to submit replies by the defendant regarding concerned interrogatories of the plaintiff's side. File be put up on* ***24.11.2022*** *for submission of requisite replies by the defendant's side regarding concerned interrogatories of the plaintiff in the form of one more opportunity. It is hereby clarified that in case of non submission of requisite replies by the defendant's side regarding concerned interrogatories of the plaintiff's side on the next date, the right of defence of the defendant shall be struck out."*

It is noted that on this date Respondent's counsel opposed the adjournment and requested that cost be imposed on account of the adjournment, however, the Court did not deem it proper to impose costs and instead gave the Petitioner an opportunity to submit his reply by 24.11.2022 with a warning that in case of failure, the right of defence of the Petitioner would be struck out. On 24.11.2022 once again the counsel appeared to state that he could not file the reply for the same reasons. On this date, an application for adjournment was also filed in which they stated that they were going to assail the dismissal of the objection petition by way of filing a civil revision before the High Court. As per the arguments made the counsel stated that the hospitalization of the Petitioner, his injury and security issues were all informed orally to the court.

The trial court, however, did not grant time and instead held that no lawful justification existed for a further grant of adjournment as a reasonable number of opportunities have been provided to the Petitioner to submit his answer to the interrogatories which he has failed to do. Consequently, the defence of the Petitioner was struck out in terms of Order XI Rule 21 CPC.

9. The basic question is to determine whether there was willful default on the part of the Petitioner whereby he deliberately and intentionally disobeyed the order of 20.10.2022 requiring him to file answers to the interrogatories. The answer here would be that this is not a case of willful default and that the failure on the part of the Petitioner to file his answers was due to circumstances beyond his control. The incident of 03.11.2022 was widely shown on national news channels and covered by the print media and was not denied by the Respondent. The Court itself accepted the reason of hospitalization and injury on 08.11.2022 as well as 17.11.2022 which is evident from its orders. Under the circumstances, there was sufficient cause for seeking the adjournment and the Court acted in haste by issuing a warning on 17.11.2022 and thereafter incorrectly recorded in its order of 24.11.2022 that there was no lawful justification for the grant of adjournments especially since it accepted these reasons on 08.11.2022 and 17.11.2022. Accordingly, there was sufficient ground to give the adjournment, and the default was not willful. Under these circumstances, it cannot be said that there was willful default and it also cannot be said that the conduct of the Petitioner was willfully contumacious, obstinate and disobedient and it also cannot be said that during the period from 08.11.2022 to 24.11.2022, the adjournments were sought with the intent to delay the proceedings.

10. Compliance with rules of procedure is fundamental to the pace and course of the litigation. When construing penal provisions, the exercise of judicial discretion by the Court has to be based on sound reasons that the circumstances justify. Judicial discretion in itself has inbuilt restraint which means that the Court cannot ignore facts and circumstances prevailing at the time and where such error can be corrected or condoned for adequate

reasons, the court can condone the non-compliance in furtherance of justice because there has been no deliberate attempt to ignore an order of the court (*Asha Rani Gupta v. Vineet Kumar* (**2022 SCC OnLine SC 829**)). The court should recognize that this is an exceptional step which should be invoked after due consideration of the facts (*Miss Santosh Mehta v. Om Prakash and others* **(1980) 3 SCC 610**). Further penal provisions do not mandate that they be applied in a mechanical way in every case rather it must be a thoughtful step, based on circumstances, that indicates willful failure, deliberate default and intentional non-performance. The Indian Supreme Court in the case reported as *Bilmal Chand Jain v. Sri Gopal Agarwal* (**(1981) 3 SCC 486**) has held that serious responsibility rests on the court where the power to strike out defence is concerned and that it will always be a matter for the judgment of the court to decide whether on the material before it, notwithstanding absence of a representation defence should or should not be struck out. What this means is that the provision merely vests power with the court to strike out the defence and does not oblige it to do so in every case. In the case of *Miss Santosh Mahta* (*supra*), the Indian Supreme Court concluded that the deliberate failure or willful default is necessary in order to invoke penal provisions and that the power to strike out defence should not be used where, despite default, there are good and adequate reasons. Order XI Rule 21 CPC is penal in nature and does not mandate a mechanical consequence for failure to comply with an order, rather it leaves it to the discretion of the court to decide if penal consequences should follow. This power for striking out of the defence under Order XI Rule 21 CPC can be exercised where the defaulting party fails to attend the hearing or is guilty of prolonged or inordinate and inexcusable delay which may cause substantial or serious prejudice to the opposite party; however, it is expected that before making an order for striking out of defence, the court must consider all the reasons given for the default which merits due consideration and assessment of facts. This is because the effect of striking out of the defence is that it will deprive the party of its ability to defend itself in the case which is a serious

matter. In this case, the court had other alternatives, at its disposal, to regulate the pace of the proceedings as well as the conduct of the Petitioner, one of which is to impose costs which would not only serve as a form of deterrence but would also lay the foundation for expeditious justice and promote a smart legal system which view was taken by this Court in its recent judgment rendered in the case reported as *Qazi Naveed ul Islam v. District Judge* (**2023 SCP 32**).

11. In the case before us, this power was exercised mechanically and more importantly, the order of 24.11.2022 itself does not state that it is based on the history of the case or the overall conduct of the Petitioner in the case. In the event that the trial court is of the opinion that the conduct of the party suggests that there is willful disobedience or deliberate attempt to delay the proceedings then it has to record its findings accordingly. The trial court focused on the dates subsequent to the order of 20.10.2022 and not on the overall conduct of the Petitioner, and reasoned that the adjournments were sought without cause and sufficient opportunities had been granted being the adjournments from 08.11.2022 to 24.11.2022. However, the order sheet does show that there were many adjournments, it also shows that oftentimes, the court had proceeded in a routine manner without much focus on the reasons for the adjournments.

12. In a case plagued by adjournments since 2017, the court must weigh the balance between a fair trial and the legitimate grounds for the latest request for adjournment. The courts are entrusted with the responsibility to dispense justice, for which they are under a duty to ensure a timely trial, which duty may have been overlooked in some of the previous instances of adjournment where requests were granted mechanically and without due consideration. However, the Petitioner's recent public shooting and injury at a political rally justified the grant of an adjournment for a reasonable time under the circumstances. The right to defence cannot be struck out without considering all relevant factors, and the court must weigh the balance between a fair trial and the circumstances at hand. The order sheet shows that the court

proceeded in a mechanical manner with the case, and granted numerous adjournments without so much as imposing cost so as to discourage the same. No doubt that the courts are overburdened with work and judges are faced with the daunting task of handling a vast number of cases every day, nevertheless, it is the court's responsibility to manage each case before it diligently by applying the provisions of the procedural law. The striking out of the Petitioner's right to defence, at this stage, while ignoring the legitimate factors in play, would be a gross injustice. The balancing act of justice must be upheld, and under these circumstances, the right to a fair defence must prevail.

13. Accordingly, the impugned order dated 07.12.2022 of the High Court and order dated 24.11.2022 of the trial court are set aside; the case is remanded to the trial court to grant reasonable opportunity to the Petitioner to file answers to the interrogatories in compliance with the order of 20.10.2022 and thereafter to proceed with the case in accordance with law.

JUDGE

Lahore
29.12.2022
APPROVED FOR REPORTING
*Alizeh/**