IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Sardar Tariq Masood
Mr. Justice Amin-ud-Din Khan
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No.920-P of 2023
(Against the judgment dated 30.11.2023 passed by Peshawar High Court, Peshawar passed in FAO No.212-P of 2023)

Duniya Gul and another

Petitioner(s)

VERSUS

Niaz Muhammad and others

...Respondent(s)

For the Petitioner(s): Mr. Inayat Ullah Khan, ASC

For the Respondent(s): Mr. Naveed Maqsood, ASC
(*Via* video link Peshawar)

Date of hearing: 16.01.2024.

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JUDGMENT

Syed Hasan Azhar Rizvi, J.--Through this petition, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**the Constitution**"), the petitioners have impugned the judgment dated 30.11.2023 of the Peshawar High Court, Peshawar whereby their first appeal against order ("**F.A.O.**") was dismissed and the order dated 08.04.2023 of the trial court, closing their right to produce oral evidence, was upheld.

2. The background of the present controversy is that respondent No. 1/plaintiff filed a suit for declaration, permanent injunction, recovery of possession as well as the sale consideration amount against the present petitioners and two others, namely, Khurshid Ahmed (defendant No.1) and Shafi Akbar (defendant No.4). The present petitioners/defendants stormily contested the suit by filling a joint written statement before the trial court. The

issues were framed by the trial court vide order dated 04.01.2016 and the case was fixed for the evidence of the respondent No.1. The respondent No. 1 completed recording his entire evidence by 09.03.2021, after which the case was adjourned for the evidence of the petitioners. While defendant No. 1 successfully recorded his complete evidence, the present petitioners failed to do so. Consequently, the trial court, vide its order dated 08.04.2023, struck off the right of the petitioners to produce oral evidence.

Being dissatisfied with this order, the petitioners challenged this order by filing an F.A.O but the Peshawar High Court dismissed the same vide the impugned order. Hence, this petition.

3. The learned counsel for the petitioners argued that the petitioners had requested the trial court to summon the official witnesses first. However, the trial court, instead of considering the request of the petitioner, hastily passed the impugned order without paying any heed to their legal request. The trial court was bound to decide the case after recording pro and contra evidence and giving both parties equal opportunity to defend their stance but failed to do so. The impugned judgment suffers from illegality and irregularity, resulting from the misreading and non-reading of evidence, misapplication of the law, and mis-appreciation and non-appreciation of facts on the record.

4. On the other hand, the learned counsel for the respondents supported the impugned judgment, arguing that the trial court considered all aspects of the matter and rightly struck off the right of the petitioners to produce oral evidence. The petitioners were found responsible for prolonging the matter on various pretexts. The impugned judgment does not suffer from any illegality or infirmity, and thus, it does not warrant interference by this Court. Therefore, the appeal is liable to be dismissed.

5. We have heard the submissions of the learned Counsel for the parties and perused the material on record with their assistance.

6. The record indicates that initially, the evidence of the respondent No.1/plaintiff-side was closed on 17.09.2019, and the case was adjourned to 07.10.2019 for the evidence of the petitioners/defendants-side. However, the petitioners did not record

their evidence until 22.02.2020, despite having obtained multiple opportunities during the intervening period. On 22.02.2020, the official witness *Patwari Halqa* (PW-6) was re-summoned with the consent of both parties for cross-examination by the petitioners. The petitioners completed the cross-examination of the said official witness on 09.03.2021, and then the case was once again fixed for 10.03.2021 for the evidence of the petitioners. To gain a proper understanding of the controversy, the proceedings on subsequent dates of hearing (excluding the dates on which the court was on leave) are summarized in the tabular form below:

Sr. No.	Date of Hearing	Evidence produced or recorded by the petitioners (Yes/No)	Order/Observation by Trial Court
1.	10.03.2021	No	Adjourned with Cost of Rs.1000
2.	11.03.2021	-do-	To record the evidence till 20.03.2021
3.	12.03.2021	-do-	-do-
4.	13.03.2021	File summoned by the D & SJ, Peshawar	Nil
5.	17.03.2021	**Yes**	Not recorded. Petitioners sought adjournment.
6.	18.03.2021	No	Directed to record the evidence till 20.03.2021
7.	19.03.2021	No	-do-
8.	20.03.2021	No	Directed to record the evidence from 22.03.2021 to 10.04.2021
9.	22.03.2021	No	Directed to record the evidence from 25.03.2021 to 10.04.2021
10.	25.03.2021	No	-do-
11.	26.03.2021	No	-do-
12.	27.03.2021	No	-do-
13.	29.03.2021	No (only defendant No.1 appeared)	-do-
14.	30.03.2021	No (Evidence of defendant No.1 recorded)	-do-
15.	31.03.2021	No (Bar on strike)	-do-

16.	01.04.2021	No	-do-
17.	02.04.2021	No	-do-
18.	03.04.2021	No (Petitioners filed an application u/o VII Rule 11 of C.P.C.)	-do-
19.	05.04.2021	No (Bar on strike)	-do-
20.	06.04.2021	No	-do-
21.	07.04.2021	No	-do-
22.	08.04.2021	No	-do-
23.	09.04.2021	No	-do-
24.	10.04.2021	No	Due to the Covid-19 case was fixed on a weekly basis
25.	17.04.2021	No	Arguments on the application u/o VII Rule 11 were heard. Adjourned for orders.
26.	24.04.2021	The Courts closed on the order of the PHC	Nil
27.	07.06.2023	No	Adjourned for order on the above application.
28.	08.06.2021	No	Application dismissed. Adjourned for evidence of the petitioners.
29.	19.06.2021	No	-do-
30.	10.07.2021	No	Adjourned for evidence of the petitioners.
31.	11.09.2021	No	-do-
32.	25.09.2021	No (Bar on strike)	-do-
33.	02.10.2021	No	-do-
34.	16.10.2021	No	**Adjourned for evidence of the petitioners. Absolute last chance with a warning to strike off the right.**
35.	30.10.2021	No	Proceedings suspended by PHC in Civil Revision. The order dismissing the Revision Petition was produced before the Court on 03.12.2022. Adjourned for evidence of the petitioners.
36.	10.12.2022	No	-do-

37.	07.01.2023	No	Notice u/o XVII Rule 3 of C.P.C. issued.
38.	14.01.2023	No	Adjourned on the application of petitioners.
39.	28.01.2023	No (Bar on strike)	Nil
40.	04.02.2023	No	Notice u/o XVII Rule 3 of C.P.C. issued.
41.	18.02.2023	No	Adjourned with last opportunity. Notice u/o XVII Rule 3 of C.P.C. with cost of Rs.2000/-
42.	18.03.2023	No	Adjourned with last opportunity. Notice u/o XVII Rule 3 of C.P.C. intact with cost of Rs.2000/-
43.	**08.04.2023** (Impugned order)	**No**	**Right of the petitioners to produce the oral evidence was struck off.**

7. There is a prevalent and concerning trend of frequent adjournment requests in lower courts, which amounts to an abuse of the process of the court. This practice has significantly contributed to a substantial backlog of litigation in the lower judiciary. It is imperative that we actively discourage this behavior to ensure the prompt delivery of justice to the citizens of Pakistan. By curbing the routine use of adjournments, we can expedite legal proceedings, alleviate the burden on the lower judiciary, and ultimately enhance the efficiency of the judicial system. This, in turn, will contribute to a more timely and effective resolution of legal matters, promoting access to justice for all.

It is apparent from the above-noted detail of the trial court proceedings that the petitioners were afforded more than forty-three adjournments spreading over more than two years for the production and recording of their evidence. Even, despite the clear warnings i.e. “last opportunity” by the trial court and the imposition of costs, the petitioners failed to produce and record the oral evidence. Besides, we have also noted the conduct of the trial court as it liberally granted unreasonable adjournments for the recording of the evidence of the petitioner.

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, 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, versus 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. It is a matter of record that the case was repeatedly adjourned at the request of the petitioners for the production of their evidence. The trial court, in an order dated 16.10.2021, issued a specific warning with penal consequences. It is worth noting that in this order, the trial court mistakenly mentioned that the evidence of the plaintiff was not present, whereas the case was actually fixed for the evidence of the defendant. The relevant portion of this order is quoted below for ease of reference:

> *"…..Adjournment granted with absolute last chance with strict direction to produce entire evidence on the next date,* ***otherwise, his right of production of evidence shall be struc****k off…."*
>
> **Emphasis Suppled.**

Despite the above specific warning, the petitioner did not produce and record the evidence on the date fixed for this purpose; however, no penal action was taken against them by the trial court. Later on, the trial court vide orders dated 07.01.2023, 04.02.2023, 18.02.2023, and 18.03.2023 again gave specific warnings to the petitioner by issuing notice under the afore-noted penal provision of Order XVII Rule 3 of the C.P.C. with cost. But, the petitioners did not take it seriously and omitted to produce and record their evidence.

Instead, they filed an application under Order VII Rule 11 of the C.P.C. for the rejection of the plaint, *albeit* at a belated stage, when the case was fixed for the evidence of the defendants and was about to be finalized. The said application was dismissed by the trial court vide order dated 08.06.201 but the petitioners did not stop there. They unnecessarily dragged the respondent No.1 up to this Court while challenging the order of the trial court dismissing their application for rejection of the plaint. During that period, the proceedings of the case were remained suspended. We, therefore, exercise restraint in passing any comment on the conduct of the petitioners as it could prejudice their case before the trial court. However, we feel no hesitation in holding that both of the above-quoted conditions as laid down by this court in the case of *Moon Enterpriser supra* for invoking the penal provision of Order XVII Rule 3 of the C.P.C. have been satisfied in this case.

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.

11. Foregoing in view, the trial court is fully justified in striking off the right of the petitioners to produce the oral evidence by invoking the penal provision of the Order XVII Rule 3 of the C.P.C. The conduct of the petitioners, including non-compliance with the court orders and the imposition of costs, provides a reasonable basis for the trial court to preclude them from presenting oral evidence in the proceedings. Similarly, the High Court correctly exercised its appellate jurisdiction and dismissed the F.A.O of the petitioners while upholding the order of the trial court. In its thorough analysis of the relevant law and available facts, the High Court has arrived at a sound and reasoned conclusion that is both legally sound and just.

12. For the reasons above, the leave is refused and the petition is dismissed. No order as to costs.

JUDGE

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Islamabad, the
16th January 2024
Not approved for reporting.
*Ghulam Raza/**