Form No: HCJD/C-121

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Regular First Appeal No. 290 of 2019

Rahmat Ali Khan Rana

Versus

Abdul Razzaq Memon and another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(04)	04.08.2021	Rahmat Ali Khan Rana, appellant in person.

TARIQ MEHMOOD JAHANGIRI, J:

Through this Regular First Appeal, the appellant has assailed orders dated 07.11.2018 and 20.06.2019 passed by learned Additional District Judge, West-Islamabad, whereby the suit filed by the appellant / plaintiff was dismissed under Order XVII Rule 3, CPC due to non-production of evidence and application for restoration of suit was also dismissed.

02. Brief facts of the case are that appellant filed a suit titled as *"Rahmat Ali Khan Rana Vs. Abdul Razzaq Memon and another"* for recovery of damages amounting of Rs. 80,000,000/- (Eighty Million), on account of

defamation under the Defamation Ordinance, 2002, before the Court of learned District Judge, West-Islamabad which was entrusted to learned Additional District Judge, West-Islamabad. Claim of the appellant / plaintiff is that he belongs to a respectable class of profession of law and enjoys good reputation and respect among his colleagues, professional fraternity. That respondent No. 1 / defendant in capacity of the President of Services Co-operative Housing Society submitted a reply on 27.11.2014 in a petition titled as *"Rehmat Ali Khan Rana Vs. Services Co-operative Housing Society"*, in the Court of Kamran Ali Cheema, Assistant Commissioner / nominee for Registrar Co-operative Housing Society, Islamabad. That respondent No. 1 / defendant, in Para 3 of the facts of reply laid down the following defamatory and derogatory remarks:-

> ***"It is also worth mentioning here that petitioner got allotment of the plot through blackmailing the management of the Society in the year 2007"*.**

03. Being aggrieved of the said remarks the appellant / plaintiff filed a suit for recovery of

damages of Rs. 80,000,000/- (Eighty Million), on account of defamation under the Defamation Ordinance, 2002. Written statement was filed, issues were framed and the suit was dismissed by the Court of learned Additional District Judge, West-Islamabad vide impugned order dated 07.11.2018. Application for restoration of the suit was also dismissed vide order dated 20.06.2019.

04. Appellant in person contends that the impugned orders and decree have been passed in fanciful manner and based on surmises and conjectures; the impugned orders and decree are against law and facts of the case; no proper opportunities for production of evidence were provided to the appellant / plaintiff; no notice under Order XVII Rule 3, CPC was given to the appellant / plaintiff; appellant was under the bonafide impression that order has been passed under Order IX Rule 3 & 4, read with Order XVII Rule 2 and Section 151, CPC, hence has prayed for setting aside of the impugned orders / decree dated 07.11.2018 and

20.06.2019 passed by learned Additional District Judge, West-Islamabad.

05. Arguments heard, record perused.

06. Perusal of record reveals that the suit filed by the appellant / plaintiff was dismissed on 07.11.2018, whereas, instant Regular First Appeal has been filed on 07.08.2019 i.e. after the delay of about more than nine months.

07. It is settled principle of law enunciated by the Hon'ble Supreme Court of Pakistan in a case titled as ***"Water and Power Development Authority Vs. Aurangzeb" (1988 SCMR 1354),*** that:

> ***"After the prescribed period of limitation has elapsed, the door of justice is closed and no plea of injustice, hardship or ignorance can be of any avail unless the delay is properly explained and accounted for".*** The same principle / law has been laid down in the recent authoritative judgment of larger bench of the Honb'le Supreme Court of Pakistan in a case titled as ***"Khushi***

Muhammad and others Vs. Mst. Fazal Bibi and other" (PLD 2016 SC 872).

08. Learned Trial Court has granted numerous opportunities for production of evidence to the appellant / plaintiff for about more than two and half years i.e. w.e.f. 07.03.2016 till 07.11.2018.

09. That total 47 opportunities for production of evidence were provided to the appellant / plaintiff but not on a single date, evidence of the appellant / plaintiff was available / present before the learned Trial Court. That last and final opportunity for production of evidence was provided to the appellant / plaintiff vide order dated 17.10.2018 and finally the suit was dismissed vide impugned order dated 07.11.2018.

10. The appellant instead of filing appeal against impugned order dated 07.11.2018, filed a petition under Order IX Rule 3 & 4, read with Order XVII Rule 2 and Section 151, CPC for restoration of the suit, said petition was also dismissed by the Court of learned

Additional District Judge, West-Islamabad vide Order dated 20.06.2019, on the ground that the suit cannot be restored as the same was dismissed due to non-production of evidence under Order XVII Rule 3, CPC and the Order dated 07.11.2018 was appealable.

11. As the appellant / plaintiff has failed to record testimony of his witnesses, delayed the proceedings on one pretext or the other. Thus his conduct surely denies him the right to claim equity, when he has not come to the Court with clean hands. It is settled law that one who seeks equity must do equity. Reference may be made to a case titled as "***Muhammad Ali Vs. Province of KPK through Secretary, Elementary and Secondary Education, Peshawar" (2010 SCMR 673)***. Learned counsel has failed to satisfy the Court that the impugned orders and decree are erroneous, illegal or unjustified.

12. The August Supreme Court of Pakistan in a case titled as ***"'Moon Enterpriser CNG Station, Rawalpindi Vs. Suit Northern Gas Pipelines Limited, through General***

Manager, Rawalpindi and another" (2020 SCMR 300), while dealing with a similar question of law pertaining to application of Order-XVII Rule 3 C.P.C has, in unequivocal terms, held that:

> ***"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".

13. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as "***Rana Tanveer Khan Vs. Naseer Ud Din and other" (2015 SCMR 1401)***, that:

"Once the case is fixed by the Court for recording the evidence of the party, it is the direction of the court to do the needful, and the party has the obligation to adduce evidence without there being any fresh direction by the court, however, where the party makes a request for adjourning the matter to a further date(s) for the purposes of adducing evidence and if it fails to do so, for such date(s), the provisions of Order XVII, Rule 3, C.P.C. can attract, especially in the circumstances when adequate opportunities on the request of the party has been availed and caution is also issued on one of

such a date(s), as being the last opportunity(ies)".

14. For what has been discussed above, suit filed by the appellant / plaintiff was rightly dismissed by the Court of learned Additional District Judge, West-Islamabad, hence the instant Regular First Appeal is without merits and accordingly **dismissed in limine.**

(MIANGUL HASSAN AURANGZEB) JUDGE

(TARIQ MEHMOOD JAHANGIRI) JUDGE

Bilal /-