JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 4348 OF 2019

KOUSAR GHULAM HAIDER

VS

ABDUL WASEEM, ETC.

Petitioner by : Mr. Shakeel Abbas and Mr. Tahir Mehmood Abbasi, Advocates.

Respondents by : Respondents Nos. 1 to 3 ex-parte.

Date of hearing : 24.03.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Petition, the Petitioner [Kousar Ghulam Haider] has assailed the Order dated 14.10.2019 **("Impugned Order")** passed by the learned Additional District Judge-East, Islamabad whereby Civil Revision filed by the Respondent No. 1 has been partly allowed and the learned Trial Court was directed to further record evidence of the Petitioner/Respondent No. 1 only to the extent of additional issues.

2. The brief facts of the case in hand are that the Petitioner filed a Suit for Declaration, Cancellation, and Permanent Injunction on 19-05-2014 against the Respondents in the Court of Senior Civil Judge (East), Islamabad. The Respondents entered appearance and filed their respective written statements. After completion of the pleadings, the learned Civil Judge (East) framed five issues vide Order dated 05-12-2015. Thereafter, the evidence of the Petitioner/Plaintiff was commenced and during the course of evidence of the Petitioner/Plaintiff, a document was sent to the handwriting expert. Subsequently, in order to seek amendment in already framed issues, the Petitioner/Plaintiff filed Application under Order XIV, Rule 5 of the Code of Civil Procedure, 1908 **("CPC")** for framing of appropriate issues in accordance with the pleadings of the parties. The Respondents filed their reply to the aforesaid Application. That while adjudicating on the Application under Order XIV, Rule 5, CPC the learned Civil Judge framed eleven fresh issues vide Order dated 15-10-2018 and required the parties to file their respective list of witnesses. On the next date of hearing i.e. 22-11-2018, the

learned Civil Judge observed that since fresh issues had been framed, therefore, the parties would start their evidence in accordance with new issues. The Respondent No. 1 being aggrieved of Order dated 15-10-2018 and 22-11-2018 filed a Civil Revision Petition on 15-01-2019 in the Court of learned District Judge (East), Islamabad which was ultimately entrusted to the Court of the learned Additional District Judge (East), Islamabad. The aforesaid Revision Petition remained pending for a while without any progress as no process fee for issuance of summons etc., was deposited by Respondent No.1 and ultimately, the said Revision Petition was dismissed vide Order dated 19-07-2019 due to non-submission of process fee/*talbana*. However, Respondent No.1 filed an application for restoration of the said Civil Revision Petition on 31-07-2019 which was restored to its original number by the learned Additional District Judge vide Order dated 06-09-2019 and passed an order to the effect that summon/notice be served upon Respondents of the said Revision Petition for 23-09-2019. Despite summoning through summon/notice/TCS and Publication in Newspapers, no one appeared on behalf of the Petitioner and consequently, the Petitioner, Respondent No. 2 and Respondent No. 3 were proceeded against ex-parte. The learned Additional District Judge vide Impugned Order allowed the Revision Petition and directed the learned Trial Court to further record evidence of the Petitioner/Respondent No. 1 only to the extent of additional issues. Being aggrieved from the Impugned Order, the Petitioner has filed the instant Writ Petition.

3. The learned counsel for the Petitioner contended that the Impugned Order is excessively harsh and has been passed in a slipshod and hurried manner that is contrary to both the law and the facts of the case, violating fundamental principles of natural justice, making it legally unsustainable and liable to be set aside; that the Petitioner was condemned unheard while passing the Impugned Order; that the Impugned Order was based on the presumption; that the Respondents Nos. 2 and 3 deliberately failed to appear despite summons and Publication, however, the Petitioner was unaware of the pending Revision Petition until 16-11-2019 and subsequently on 20-11-2019; that no disclosure was made regarding the Revision Petition during the learned Trial Court's proceedings, further undermining the fairness of the process; that the notice was not served through the office of the learned Civil Judge (East), where the trial was pending; that no effort was made to serve notice upon the Petitioner's known residential

address i.e. House No. 5, Atta Turk Block, New Garden Town, Lahore, despite Respondent No. 1 being aware of it, as is evident from the Affidavit; that the Impugned Order dated was passed ex-parte and is, therefore, liable to be set aside; that the learned Additional District Judge (East), Islamabad, erred in concluding that list of witnesses could not be furnished after framing fresh issues; that this interpretation is inherently unlawful and contradicts Order XVI, Rule 1, CPC, which explicitly states that a list of witnesses should be submitted after the settlement of issues; that since six new issues were framed on 15-10-2018, it was only fair and legally appropriate for the Petitioner/Plaintiff to submit a fresh list of witnesses; that the Petitioner complied with this requirement and examination-in-chief of the witnesses was conducted based on the new list; and that superior Courts have consistently held that cases should be decided on merits rather than technicalities; that the Court is duty bound to ensure provision of fair opportunities to the parties seeking redress. Reference was made to 2013 YLR 765 Karachi, 2012 PLC (CS) 1335, and 2011 YLR 5 Lahore, which emphasize that technicalities should not obstruct substantive justice. The learned counsel prayed for setting aside the Impugned ex-parte Order dated 14-10-2019, as it was passed in violation of legal principles and fundamental rights of the Petitioner.

4. I have heard the learned counsel for the Petitioner and have also perused the record with his able assistance. The Respondents were proceeded against ex-parte on 23.04.2024.

5. The question before this Court is that as to whether after framing additional issues, the learned Trial Court can ask for a fresh list of witnesses or not. In this regard, the relevant provision of law is Order XVI, Rule 1, CPC, the relevant portion is reproduced as under: -

> *"**1. Summons to attend to give evidence or produce documents.**—[(1) Not later than seven days after the settlement of issues, the parties shall present in Court a [Certificate of readiness to produce evidence, along with a] list of witnesses whom they propose to call either to give evidence or to produce documents.*
>
> *(2) A party shall not be permitted to call witnesses other than those contained in the said list, except with the permission of the Court and after showing good cause for the omission of the said witnesses from the list; and if the Court grants such permission, it shall record reasons for so doing."*

6. In the present case, the learned Trial Court initially framed issues on 05.12.2015 after receiving the pleadings from both sides and they were directed to submit the list of witnesses. The Petitioner who is the Plaintiff in the main suit failed to submit the list of witnesses within seven days after the framing of issues, however, at a later stage she filed an application for framing of additional issues. The learned Trial Court allowed that application vide Order dated 15.10.2018 and through Order dated 22.11.2018, directed the Petitioner to produce her evidence. Feeling aggrieved, Respondent No.1 challenged the said order before the learned Additional District Judge through the filing of Civil Revision, which was partially accepted vide the Impugned Order. The learned Additional District Judge held that it will be a surprise for the opposite party if the Petitioner is allowed to produce list of witnesses after framing additional issues.

7. The Petitioner failed to submit list of witnesses at the first instance within seven days and when the learned Trial Court allowed and framed additional issues the case was fixed for Plaintiff's evidence on 22.11.2018. On 22.11.2018, the learned counsel on behalf of Respondent No. 1 submitted that the evidence would be recorded from where it was discontinued. The exact wordings of the Order Sheet dated 22.11.2018 is reproduced as under: -

> "کونسل مدعی حاضر۔ کونسل مدعا علیہ حاضر۔ فریقین کہ ھدایت کی جاتی ہے کہ آئندہ اپنی شہادت پیش کریں۔ کونسل مدعا علیہ نے بیان کیا کہ شہادت دوبارہ وہیں سے شروع کی جائے جہاں تک پہلے شہادت قلمبند ہو چکی ہے اب چونکہ تنقیحات دوبارہ وضح کی گئ ہیں لہذا شہادت بھی ان تنقیحات کی حد تک ہی پیش کی جانی ہے لہذا اب شہادت فریقین دوبارہ شروع کی جائے گی۔ مدعی کو ھدایت کی جاتی ہے کہ آئندہ تاریخ میں اپنی شہادت پیش کرے۔ اب برائے شہادت مدعی پیش ہووے۔ اب بتقرر 05/01/19 کو پیش ہووے۔"

It seems that the learned Trial Court by using the word " شہادت فریقین دوبارہ شروع کی جائے گی" means that the evidence will be recorded afresh, that is why Respondent No. 1 challenged the said Order in Civil Revision before the learned Additional District Judge, East-Islamabad. The learned Additional District Judge has rightly observed that it will be a surprise to allow the Petitioner to produce evidence regarding those issues which were framed on 05.12.2015 as the Petitioner has failed to submit list of witnesses within seven days. The learned Additional District Judge has rightly concluded to allow the Petitioner to produce evidence only relating to the additional issues and not to the issues already framed because in the

garb of additional issues, the Petitioner will be given an opportunity to submit evidence afresh.

8. In view of the foregoing, I do not find any illegality or irregularity in the Impugned Order passed by the learned Additional District Judge, hence, the instant Writ Petition is **dismissed**. The Petitioner shall present evidence from individuals who are acquainted only about the additional issues and not about the rest of the issues that were framed earlier on 05.12.2015.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this 8th day of April 2025.

JUDGE

Sajid/--