JUDGMENT-SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 1460 of 2022

Phoenix Armour (Pvt.) Ltd.
Versus
Phoenix Armour Worker Union, etc.

Date of Hearing	:	**07.09.2022.**
Petitioner by	:	Mr. Shahid Anwar Bajwa, Advocate
Respondent by	:	Sardar Tariq Hussain, Advocate.

ARBAB MUHAMMAD TAHIR, J. Through the instant writ petition, petitioner (*Phoenix Armour (Pvt.) Ltd., company registered under the Companies Ordinance, 1984*) impugns orders dated 02.03.2022 and 31.03.2022, passed by the learned Member and Full Bench of the National Industrial Relations Commission-NIRC, Islamabad, respectively whereby its application for summoning of witnesses was dismissed while appeal also met the same fate.

2. The parties are in contest over Charter of Demands ('**COD**'). Initially, petition in terms of Section 42 of the Industrial Relations Act, 2012 **(Act of 2012)** filed by the respondent No. 1 was allowed by the learned Member NIRC vide order dated 03.02.2021. In-appeal by the petitioner in terms of Section 58 of the Act of 2012, the matter was remanded to the learned Member NIRC for decision afresh after recording the evidence of the parties and seeking counter reply of the petitioner to the COD. In-post remand proceedings, a witness of the respondent No. 1 was duly cross examined whereafter the petitioner filed application for summoning of the witnesses mentioned therein, which was contested by the respondent No. 1. The learned Member NIRC after hearing the parties dismissed the application vide order dated 02.03.2022. The petitioner then

preferred an appeal before the Full Bench of NIRC but it was also dismissed vide order dated 31.03.2022, hence instant writ petition.

3. Learned counsel argued that there was no delay in filing application for summoning of witnesses because it was filed on the day of cross examination of first witness of the respondent No. 1; that the witnesses sought to be summoned would be essential for just decision of the controversy; that it is incumbent upon the learned Member NIRC to record evidence regarding petitioner's ability to pay, who is suffering loss which can only be established through the testimony of a Finance Manager of the Company and the Auditor who audited the accounts. According to the learned counsel, before acceding to the COD of the respondent No. 1, it is incumbent to ascertain the industrial practice in-vogue, petitioner's ability to pay besides the regional practice which could only be established through the testimony of the proposed witnesses, being representatives of the competitor companies. It is added that that the Manger of the Bank would appear only if summoned by the Court so as to prove increase allowed to the workmen by the petitioner company. Learned counsel placed reliance upon case law reported as ***PLD 1961 SC 393 and AIR 1963 SC 1327 (V 50 C 197).***

4. On the other hand, learned counsel for the respondent No. 1 argued that no list of witnesses had been tendered by the petiotner; that no specific name of any witness had also been mentioned therein; that no justification for non-filing of the application at the relevant time had been advanced; that the petitioner has failed to show good cause for the omission to file the list of witnesses and their relevance to the controversy, as under the law, every party has to substantiate its claim by producing evidence/witnesses at its own and not through the process of Court. Learned counsel relied upon ***"Muhammad Anwar & others v. Mst. Ilyas Begum & others (PLD 2013 SC 255)***".

5. Heard. Record perused.

6. The Hon'ble Apex Court in ***Amjad Khan v. Muhammad irshad (deceased) through LRs (2020 SCMR 2155)*** has graciously laid down that Order XVI Rule 1 CPC provides that litigant parties shall submit in Court a

list of witnesses, to be called for attendance within seven days following the framing of issues, and they shall not be permitted to call any witness outside of that list, except with the permission of the Court. The purpose of this prohibition is to ensure that the litigant parties may prepare their cases with a measure of certainty and know the kind of the evidence going to be produced, so that they may make necessary preparation for rebuttal and cross-examination and were not taken by any surprise at belated stage in the proceedings.

7. The wisdom laid down guides to hold that scope of Order XVI CPC did not go beyond summoning and attendance of witnesses through the Court and it did not extend to the witnesses that parties sought to produce voluntarily without invoking the summoning powers of the Court. The witnesses summoned through the Court to give evidence or to produce documents are not bound by the pleading or the case setup by the parties. They could introduce new elements in the case which may shock the opposing party and adversely impact its case without giving sufficient notice. It is to guard against such surprises by summoned witnesses; the embargo of Order XVI rule 1 CPC is introduced.

8. Under the principle, notwithstanding the embargo contained in Order XVI Rule 1 CPC it is left open for the Court to allow the production or summoning of the witnesses at a belated stage *upon showing of good cause.* Having examined the case on the touchstones of the principles on the subject, it is noticed that the petitioner intends to counter the COD of the respondent No. 1 by producing evidence that comprised of representatives of its competitor companies, besides the Bank Manager where it is maintaining account and a representative of the firm, who conducted audit of its accounts.

10. On considering the request of the petitioner, the learned Member NIRC observed that there is no need of the Competitor companies as the petitioner has to justify the COD while the respondent (*petitioner herein*) shall have right to defend against the said COD. Regarding production of Bank Manager, it was observed that the Bank Statement of the salary account would be sufficient. The testimony of representative of Audit

Company would not be crucial when it is not denied by the other side. There is no contest on the point that the petitioner had not been able to fulfill the pre-requisites contained in Order XVI Rule 1 CPC, therefore, is precluded to ask for summoning of the witnesses through the Court.

11. However, it does not mean that the petitioner is barred to produce witnesses at any time during the proceedings as a part of its' evidence as according to paragraph-5 of the order-in-original dated 02.03.2022 petitioner was permitted to submit affidavit in evidence of the witnesses on the next date of hearing and if so desires may include the companies, bank and audit company as their witnesses. Thus, the petitioner shall have a right to produce their witnesses at its own to counter the COD of the respondent No. 1. There is, thus, no perpetual clog on the right of the petitioner to adduce evidence.

12. So far as submissions on merits and the procedure to be followed, proper course for the petitioner would be to agitate the same before the appropriate forum as this Court cannot assume the role of adjudicator by stepping into the shoes of the trial Court.

13. For the forgoing reasons, impugned orders do not call for any interference. Consequently, instant writ petition fails and accordingly **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____09.2022.

JUDGE

//*Kamran*//