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

Writ Petition No.2827 of 2022

Matloob Hussain and others

Versus

Safia Bibi and others

Petitioners by	:	Ch. Khanzada, Advocate.
Respondent No.1 by	:	Ch. Abdur Rehman Hurr Bajwa, Advocate.
Date of Hearing	:	05.10.2022

ARBAB MUHAMMAD TAHIR, J.:- The petitioners have called in question the order dated 15.06.2022 passed by the leaned Civil Judge-East, Islamabad dismissing the petitioners' application dated 19.05.2022 seeking permission to produce additional documents / documentary evidence.

02. Ch. Khanzada, learned counsel appearing on behalf of the petitioners has contended that the documents that were sought to be produced were public documents; that the said documents were necessary for the just resolution of the dispute; that the object of the law is to prevent fraud and not to penalize a party for non-production of the documents in time; that the authenticity of the said documents was not questionable; that the learned trial Court had dismissed the petitioners' application regarding production of the additional documents without applying its judicial mind; that the learned trial Court did not take into account the petitioners' assertions while dismissing the said application; that the learned trial Court travelled beyond the jurisdiction vested in it; that the impugned order suffers from gross irregularity; that the learned Civil Court acted in a mechanical manner, which renders the impugned order to be set aside, concluded the learned counsel for the petitioners.

03. Conversely, Ch. Abdur Rehman Hurr Bajwa, learned counsel appearing on behalf of respondent No.1 has vehemently opposed the arguments advanced by the learned counsel for the petitioners by contending that the petitioners had filed the application for production of the additional

documents/evidence just to protract the proceedings; that the documents/evidence that were sought to be produced at a belated stage, were admittedly not essential for the adjudication of the pending suit; that the impugned order passed by the learned Civil Court does not suffer from any illegality calling for interference by this Court, concluded the learned counsel.

04. Heard. Record perused.

05. Perusal of the record reflects that on 25.10.2016 a suit for declaration, cancellation of mutations, recovery of possession and permanent injunction was filed by respondents No.1 and 2. The said suit was contested by the respondents by filing their written statement. It appears that an application under Order XXXIX Rule 1 and 2 was also filed before the learned Civil Court which was dismissed by the learned Civil Court on 24.05.2019. On the same day i.e. 24.05.2019, the learned Civil Court framed the following issues:-

1. *Whether the plaintiff is entitled to decree for declaration, cancellation of mutations, recovery of possession and permanent injunction? OPP*
2. *Whether the mutation No.319 of the year 1990 was fraudulently and wrongly entered in favour of the defendants? OPP*
3. *Whether the suit of the plaintiff is barred by law? OPD*
4. *Whether the suit of the plaintiff is false, frivolous, hence liable to be dismissed. OPD.*
5. *Relief.*

06. The parties to the proceedings were directed to submit the list of witnesses within seven days and the matter was adjourned to 08.07.2019 for the plaintiffs / respondents No.1 and 2's evidence. It appears that on 17.09.2020 the evidence of the plaintiffs/respondents No.1 and 2 was completed and the case was fixed for the defendants/petitioners' evidence. The petitioners/defendants have been selective in annexing the order sheet of the learned Court below. There is nothing on the record which would show as to how many opportunities were in fact granted to the petitioners/defendants to adduce their evidence. However, perusal of the impugned order shows that ample opportunities were granted to the petitioners / defendants to produce their evidence but to no avail. Resultantly, on 01.03.2022 notice under Order XVII Rule 3 C.P.C. was given to the petitioners / defendants coupled with costs to the tune of Rs.3,000/-. Apparently, on 01.03.2022, an application for producing special power of attorney as an additional evidence was filed by the petitioners / defendants and was allowed by the learned Civil Court.

07. On 19.05.2022, the petitioners/defendants filed an application before the learned Civil Court seeking the production of additional evidence, which was dismissed by the learned Civil Court through the impugned order dated 15.06.2022. The documents that were sought to be produced included the following registered sale deeds/mutations registered at:-

i. Serial No.6795, volume No.1879, page No.175-177, dated 11.09.2004
ii. Serial No.2975, volume No.3133, page No.135-137, dated 19.03.2009
iii. Serial No.11523, volume No.5216, page No.176-177, dated 06.06.2016
iv. Serial No.6457, volume No.2666, page No.120-122, dated 26.05.2007
v. Serial No.7980, volume No.2695, page No.179-181, dated 30.06.2007
vi. Serial No.8318, volume No.2090, page No.89-91, dated 25.06.2005
vii. Serial No.10757, volume No.4169, page No.186-193, dated 09.08.2012
viii. Serial No.15922, volume No.3904, page No.38-145, dated 27.12.2011
ix. Serial No.12582, volume No.2780, page No.175-177, dated 19.11.2007
x. Serial No.12583, volume No.2780, page No.178-180, dated 19.11.2007
xi. Serial No.2923, volume No.2858, page No.160-162, dated 11.03.2008
xii. Serial No.1306, volume No.6766, page No.98-107, dated 27.01.2021
xiii. Serial No.8598, volume No.1739, page No.72-74, dated 24.12.2003
xiv. Serial No.10492, volume No.5193, page No.5-6, dated 24.05.2016."

08. The record reflects that the plaintiffs/respondents No.1 and 2's evidence was completed as far back as 24.03.2020 and the matter was fixed for the petitioners'/defendants' evidence. The petitioners / defendants have not shown any compliance with the order of the learned Civil Court regarding production of the evidence. The conduct of the petitioners / defendants is apparent from the fact that they were extended umpteen opportunities to lead their evidence, but to no avail. Keeping in view the conduct of the petitioners / defendants, the learned Civil Court was constrained to issue notice in terms of Order XVII, Rule 3 C.P.C. It has been almost two years that the petitioners/defendants protracted the proceedings in the suit by not adducing their evidence on one pretext or the other. Apparently, the evidence of the petitioners / defendants still needs to be concluded and the suit instituted by respondents No.1 and 2 / plaintiffs is still

pending. It is perhaps for this irresponsible conduct of the petitioners/defendants that the proceedings in the suit have not been taken to their logical conclusion despite lapse of almost five and a half years post institution of the suit. The fate of the suit is yet to be decided.

09. The documents that were sought to be produced by the petitioners / defendants would lead to the multiplicity of litigation. The petitioners / defendants have not come up with any plausible explanation as to why they have not adduced their evidence despite a lapse of almost two years. Even otherwise, the order passed by the learned Civil Court is an interlocutory order and such an order is not amenable to the writ jurisdiction of the High Court under Article 199 of the Constitution. The doctrine of *lis pendens* substantially comes to the rescue of the petitioners / defendants.

10. In view of what has been discussed above, I find no illegality in the impugned order calling for interference by this Court. Therefore, this writ petition, being devoid of merits, is accordingly **dismissed**. Having noticed the conduct of the petitioners / defendants in protracting the proceedings in the suit, costs to the tune of Rs.20,000/- are imposed on the petitioners / defendants which shall be paid to respondents No.1 and 2 on the next date of hearing before the learned Civil Court. Before parting with this judgment, it has been observed that the suit was instituted as far back as 25.10.2016 and the same is still pending, thus the same needs to be decided expeditiously. The learned Civil Court is expected to decide the pending suit expeditiously and preferably within a period of two months from the date of the receipt of this order. If on the next date of hearing, the petitioners / defendants do not adduce their evidence, the learned Civil Court would be at liberty to resort to the penal provision of Order XVII, Rule 3 C.P.C. by striking of the petitioners' / defendants' right to produce evidence.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____.11.2022.

JUDGE

//Kamran//