JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CIVIL REVISION NO. 80 OF 2023

MUHAMMAD TARIQ BASHIR

VS

MUHAMMAD TAHIR BASHIR AND OTHERS

Petitioner by : **Mr. Arif Khan Gigyani, Advocate.**

Respondents by : **Mian Khurram Shahzad, Advocate for the Respondents No.1 & 2.**
Nemo on behalf of Respondents No.3 & 4.

Date of hearing : **26.05.2025**

MUHAMMAD AZAM KHAN, J.

1. The Petitioner/Plaintiff has filed the instant Revision Petition against the Order dated 04.05.2023 ("**Impugned Order**") passed by learned Additional District Judge-VI, Islamabad-East ("**Trial Court**") whereby the right of the Petitioner/Plaintiff to produce his evidence and record his statement is closed under Order XVII, Rule 3, Code of Civil Procedure, 1908 **("CPC")**.

2. The brief facts giving rise to the filing of the instant Revision Petition are that the Petitioner/Plaintiff filed a Suit for Declaration, Cancellation of Transfer of Leasehold Rights of Plot No. A-39, P&V Scheme No. 11, Park Road, Chak Shahzad, Islamabad, Permanent and Mandatory injunction **("Suit")**, before the learned Trial Court. The Suit was contested by the Respondents/Defendants by filing written statements. On 07.02.2023, the learned Trial Court framed the issues, and the case was fixed for the Petitioner's/Plaintiff's evidence on 14.02.2023. Due to the non-production of evidence by the Petitioner/Plaintiff, the learned Trial Court, vide the Impugned Order dated 04.05.2023, under Order XVII, Rule 3, CPC, closed the right of the Petitioner/Plaintiff to produce his evidence and record his statement. Being aggrieved by the Impugned Order, the Petitioner/Plaintiff has filed the instant Revision Petition.

3. The learned counsel for the Petitioner/Plaintiff submits that the Impugned Order is against the principles of equity and natural justice, and if the Impugned Order is not set aside, the Petitioner/Plaintiff shall suffer irreparable loss; that the Impugned Order was made in a hasty manner without considering the circumstances in an equitable manner; that striking off the right to produce evidence is a severe step; that lesser penalties or remedies were available that could have adequately addressed the issue, i.e., costs; that the learned Trial Court misused its discretionary powers by choosing the harshest penalty; that the Impugned Order suffers from irregularity and illegality, hence, the same is liable to be set aside; that the learned Trial Court has failed to appreciate that the Petitioner/Plaintiff was deprived of his valuable and fundamental rights, including the right to a fair trial and the principle of natural justice as enshrined in Article 10A of the Constitution; that it is a settled principle of law that the Court has to ignore technicalities and decide the matter strictly in accordance with law and on merits. Lastly, the learned counsel for the Petitioner/Plaintiff prayed that the instant Civil Revision Petition may be allowed, the Impugned Order may be set aside, and the Petitioner/Plaintiff may be given one last opportunity to produce his evidence and record his statement.

4. The learned counsel for Respondents No. 1 & 2 submitted that the learned Trial Court has passed a well-reasoned order; that the Petitioner/Plaintiff has failed to produce evidence despite availing several opportunities; and that the Impugned Order does not suffer from any illegality or irregularity. Lastly, the learned counsel prayed for the dismissal of the present Civil Revision Petition.

5. No one is in attendance on behalf of Respondents Nos. 3 and 4, despite service of notice; therefore, the said Respondents are being proceeded against ex parte.

6. I have heard the learned counsel for the parties and have also perused the relevant record with their able assistance.

7. A perusal of the order sheet of the learned Trial Court reveals that on 07.02.2023, issues were framed, and the case was fixed for the Petitioner/Plaintiff**'s** evidence on 14.02.2023. On 14.02.2023, at the request of the Petitioner/Plaintiff, the case was adjourned to 23.02.2023. On 23.02.2023, due to the unavailability of the Presiding Officer, the case was adjourned to 08.03.2023. On 08.03.2023, the Petitioner/Plaintiff was given the opportunity to produce evidence at a cost of Rs. 2,000/- on 20.03.2023. On 20.03.2023, the case was adjourned for evidence of the

Petitioner/Plaintiff due to the unavailability of the learned Presiding Officer. On 11.04.2023, at the request of the Petitioner/Plaintiff's counsel, the case was adjourned for 04.05.2023. On 04.05.2023, on the first call, learned counsel for the Petitioner/Plaintiff requested an adjournment; however, his request was turned down, and he was directed to produce the Petitioner/Plaintiff and his witnesses for their statements. The matter was then adjourned for a second call; however, none of the witnesses were produced until the closing hours of the Court, despite repeated calls. Resultantly, the learned Trial Court closed the right of the Petitioner/Plaintiff to produce his evidence and record his statement.

8. The learned Trial Court provided the Petitioner/Plaintiff with ample opportunity to produce his witnesses, but he failed to do so. The learned Trial Court imposed costs to compel the Petitioner/Plaintiff to produce his witnesses, and ultimately, his right to produce evidence and record his statement was closed. In this regard, reliance is placed on a recent order issued by the august Supreme Court of Pakistan in C.P.L.A No. 1033-L of 2024, in which it is held as under:-

> *"4. Laws and Rules are enacted and formulated as well as promulgated in order to streamline the working and functioning of an institution(s). Court(s) and forum(s) and if an institution(s) is functioning without any formal rule(s) or regulation(s) and any parameters, making its employee(s) answerable and accountable for the act(s) or fault, it would cause anomalous situation and such institution(s) would not remain functional for a long time. Same is the situation in the judicial system, if the litigants are allowed to proceed with their matters without following rules and regulations, framed and promulgated to lead litigation to an ultimate end at the earliest, it would not only increase the burden upon the Court(s) but also destroy the trust of the general public upon judicial system, as such the litigants cannot be permitted to take the Courts for granted and proceed with the lis as per their whims and wishes as well as cause agony to their rival parties without any progress in the matter(s) brought against them (rival party). Having observed above, in the instant case after procuring attendance of the respondent/defendant and submission of written statement, the issues were formulated on 04.03.2023 and petitioner was directed to produce his evidence and the Suit was adjourned for 25.03.2023. Again two consecutive adjournments were granted but neither the petitioner(s) nor his witnesses appeared before the trial Court. On 23.09.2023, upon the request of the learned counsel for the petitioner/plaintiff, the Suit was adjourned for production of evidence with absolute last and final opportunity for 18.11.2023. However, on the adjourned date again the petitioner failed to appear and produce his evidence: upon request of his learned counsel the Suit was adjourned for evidence of the petitioner subject to costs of Rs.1000/-, notably, with an absolute last and final opportunity, for 25.01.2024. Despite such a vivid order and caution of absolute last and final opportunity, the petitioner did not bother to pay heed and protect his rights by appearing in person before the trial Court and producing his evidence or submitting reasonable and sufficient cause for adjourning the case, which was necessary and sine qua non for*

adjournment as required under Order XVII, Rule 1(1). The Code, which is reproduced infra:

> ***1.*** *Court may grant time and adjourn hearing. (1) The Court may, if sufficient cause is shown, at any stage of the Suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the Suit.'*

Perusal of the order sheet maintained by the trial Court goes to make it diaphanous that the adjournment(s) already sought were also without submitting any reasonable and sufficient cause, however, the trial Court took a lenient view and afforded the petitioner opportunities to produce his evidence but he failed to avail the same. Even the trial Court proceeded to impose cost of adjournment as enunciated under Rule (2) of Order XVII, The Code but, as observed above, even then the petitioner did not bother either to appear before the trial Court, pay cost(s) or to produce his evidence, which would automatically lead the trial Court to proceed with the matter as provided under Rule (3) of The Code which reads:

> *'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 witness, or to perform any other act necessary to the further progress of the Suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the Suit forthwith.'*

Though, it is a settled law that evidence of a party cannot be closed under Order XVII, Rule 3, CPC for non-production of evidence where the case on the previous date was not adjourned at the request of such party. For the application of Rule 3 the following conditions must co- exist. a). Adjournment must have been granted to the party at his request; b). It must have been granted to it for the purposes mentioned in the rule 3; c). The party who has taken the time defaulted in doing the act for which he took the time from the court; d). The party must be present or deemed to be present before the court; e). That there must be some material on record for decision of the case on merits and; f). That the court must decide the Suit forthwith that is within a reasonable time. However, in the instant case, the above portrayal of the facts goes to make it diaphanous that how the petitioner proceeded with the matter and pursued the case. It seems that he intends to proceed with the matter as per his whims and wishes, to carry on entangling his rival(s) as well as the Court without any final determination of rights of the parties and wants to continue his possession over the suit property. Such practice has been discouraged by this Court, because one cannot be allowed to make mockery of law and procedure provided for conducting proceedings in a lis, as the ultimate goal of enactment(s) and procedural law(s) is to determine the rights of the parties as early as possible, so that trust of the litigants could be developed upon the institution(s). In the instant case, more than sufficient opportunities have been granted to the petitioner for producing his evidence and despite putting him under caution he did not bother to avail the same. Such like indolent person(s) cannot be allowed to play with the process of the Court and linger on the matter on one pretext or the other, that too, without any plausible and valid reason. It is evident from record that through speaking order(s) the petitioner was granted with absolute last and final opportunities for production of his evidence with clear cut warnings, the petitioner did not pay any heed to the orders and direction of the trial Court, which shows his adamant attitude towards the orders of the trial Court. The above picture of affairs makes it crystal clear that how the petitioner pursued his case and showed his disobedience and indifferent demeanour towards the orders of the Court; thus, such

like indolent person cannot seek favour of law, because law favours the vigilant and not the indolent."

9. Reliance is further placed on the judgments reported as *Lutfullah Virk v. Muhammad Aslam Sheikh*, **PLD 2024 Supreme Court 887**, *Duniya Gul v. Niaz Muhammad*, **PLD 2024 Supreme Court 672**, *Moon Enterprises CNG Station, Rawalpindi v. Sui Northern Gas Pipelines Limited*, **2020 SCMR 300**, and *Rana Tanveer Khan v. Naseer-ud-Din and others*, **2015 SCMR 1401**.

10. The upshot of the above discussion is that the learned Trial Court provided several opportunities to the Petitioner/Plaintiff to produce his evidence in support of his claim, but he failed to do so. Therefore, the learned Trial Court had no other option but to close the right of the Petitioner/Plaintiff to produce his evidence and record his statement, as the law favours the vigilant, not the indolent. Hence, in the circumstances, the instant Civil Revision is **dismissed** as devoid of merit.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____day of June 2025.

JUDGE

Sajid