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

R.F.A. No. 614 of 2024

Muhammad Ijaz
Versus
Ghulam Muhammad

Appellant by	:	Mr. Asad Ullah Khan Advocate
For Respondent No. 1	:	Respondent in person
Date of Hearing	:	04.03.2025

INAAM AMEEN MINHAS, J. This Regular First Appeal is directed against the judgment and decree dated 11.11.2024, passed by the learned Civil Judge 1st Class, (Court-3), Islamabad (West), whereby suit filed by the appellant/plaintiff for recovery of Rs.29,14,428/- alongwith markup with prevailing bank rate was dismissed to the extent of recovery of amounts of Rs.12,08, 428/-. However partial decree passed earlier vide order dated 04.12.2023 with respect to the admitted claim of Rs.17,06,000/- shall remain in field.

2. Brief Facts of the case are that the appellant/ plaintiff rented out shop No.3, block No.6-E, Sitara Market Sector F-7/2, Islamabad. Rent of said shop was fixed as Rs.66,000/- per month, which had to be paid till 5th of each month. Last rental agreement was executed till 30.06.2019. Appellant/plaintiff asked the respondent/ defendant to get vacate the said premises/shop but he started delaying tactics, consequently the ejectment petition was filed and ultimately the possession of the suit shop was handed over to the appellant/plaintiff through the Bailiff of the court in execution petition. Since the respondent/defendant remained in possession of the said premises till 01-09-2022 and an amount of Rs.29,14,428/- was outstanding and the appellant filed the suit for recovery of Rs.29,14,428/- along with markup

with prevailing bank rate, which was partially decreed on 04.12.2023 to the extent of outstanding rent of Rs.17,06,000/- on the basis of admission made by the respondent / defendant in his written statement, which was not challenged by the respondent/defendant and to the extent of remaining amount of Rs.12,08,428/- the learned Trial Court framed the issues and fixed the case for appellant/plaintiff's evidence. Right of evidence of the appellant/plaintiff was closed by the learned trial Court vide order dated 11.11.2024 and dismissed the suit as stated in para No.1 above.

3. The learned counsel for the appellant has argued that the appellant is an elderly individual suffering from multiple medical ailments and health conditions. It has been contended that there was sufficient evidence of non-payment of remaining rent amount was available, however, instead of passing the impugned judgment and decree on merit, dismissal the suit of the appellant/plaintiff; that the trial court, while exercising jurisdiction under Order XVII, Rule 3 of the Code of Civil Procedure (CPC), has acted contrary to the established principles of law. Consequently, the order passed by the learned Trial Court is not legally sustainable.

4. Furthermore, the learned counsel asserted that the learned Trial Court possesses ample authority to issue a decree for the outstanding amount of Rs. 1,208,428/-. However, the judgment and decree rendered by the trial court have adversely affected the valuable rights of the appellant, therefore, impugned judgment and decree is liable to be set aside.

5. On the other side, the respondent/defendant appeared in person and submitted before the Court that he has been making payments towards the admitted rent

amounting to Rs. 1,706,000/- before the Executing Court. The respondent further contended that, concerning the disputed amount, the appellant has failed to furnish any substantive evidence in support of his claim and that Trial Court has rightly exercised its jurisdiction and has passed the impugned order/judgment and decree in accordance with law.

6. Arguments heard, record perused.

7. Perusal of order sheet of the suit reveals that issues were framed on 04-12-2023, and case was adjourned to 07.02.2024 for appellant/plaintiff's evidence. On 07.02.2024, adjournment was granted for plaintiff's evidence sought by the learned proxy counsel for the plaintiff and case was adjourned to 03.04.2024. On the said date, evidence of the appellant was not present and case was again adjourned to 06.06.2024. On 06.06.2024, evidence was not present and last opportunity was granted to the appellant for his evidence and case was adjourned to 12.09.2024. On the said date, again evidence of the appellant/plaintiff was not present, case was adjourned to 11.11.2024 and notice under Order XVII Rule 3 CPC was issued to the appellant/plaintiff. On 11.11.2024, appellant/plaintiff failed to produce his evidence, therefore, learned Trial Court invoked the provisions of Order XVII Rule 3 of CPC and closed the right of the appellant/plaintiff for production of evidence. Resultantly, suit of the appellant/plaintiff was dismissed.

8. The Supreme Court in the case of "*Moon Enterpriser CNG Station, Rawalpindi Vs. Sui Northern Gas Pipelines Limited"* **(2020 SCMR 300)** categorically held that where the Court had passed an order granting last opportunity, it had not only passed a judicial order but also made a promise to the parties to the lis that no further adjournment would be granted for any reason. The order

to close the right to produce evidence must automatically follow failure to produce evidence despite last opportunity coupled with a warning. Supreme Court observed that the trend of granting (Akhri Mouqa) then (Qatai Akhri Mouqa) and then (Qatai Qatai Akhri Mouqa) made a mockery of the provisions of law and that such practice must be discontinued. For the purpose of maintaining the confidence of the litigants in the Court system, it was important that where last opportunity to produce evidence was granted and the party had been warned of the consequences, the Court must enforce its order unfailingly and unscrupulously without exception.

9. The Court laid down two conditions in the above referred case that must be met; first, at the request of a party to the suit for the purpose of adducing evidence, time must have been granted with a specific warning that said opportunity would be the last and failure to adduce evidence would lead to closure of the right to produce evidence; and, secondly the same party on the date which was fixed as last opportunity failed to produce its evidence. Failure of both the conditions would result in the Court enforcing its order and honoring its promise.

10. The facts of the instant case demonstrate that the Trial Court exercised ample judicial discretion in affording multiple opportunities to the appellant/plaintiff to produce evidence. However, the record unequivocally reflects that despite being granted five distinct opportunities extending over nearby a year after framing of issues on 04-12-2023, the appellant/plaintiff failed to fulfill this fundamental obligation. Furthermore, the issuance of a notice under Order XVII, Rule 3 CPC underscored the gravity of the matter, yet the appellant/plaintiff continued to neglect the production of evidence.

11. The appellant's plea that he is an elderly individual suffering from ailments, that allegedly get in the way to produce evidence, is not legally tenable. The legal system provides for alternative measures, including the execution of a power of attorney, enabling the appellant/plaintiff to authorize a representative to act on his behalf in the legal proceedings. However, no such reasonable step was taken by the appellant, indicating a lack of due diligence.

12. In view of the foregoing, it is evident that the Trial Court not only adhered to the prescribed legal framework but also extended sufficient and reasonable opportunities to the appellant/plaintiff. The trial court's decision to close the plaintiff's right to produce evidence was, therefore, a justified and legally sound course of action.

13- In view of above, the impugned judgment and decree dated 11.11.2024, is well reasoned, in accordance with law on the subject and, therefore, do not call for any interference. Consequently, instant appeal fails and is accordingly **dismissed**. Parties are left to bear their own costs.

(INAAM AMEEN MINHAS)
JUDGE

A.R.ANSARI*

Announced in the open Court on _____.03.2025.

JUDGE