JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

REGULAR FIRST APPEAL NO. 66 OF 2025

NAEEM AFZAL

VS

BABAR IQBAL & ANOTHER

Appellant by : Ms. Uzma Mehmood Qazi, Advocate.

Respondents by : Mr. Qamar Inayat Raja, Advocate.

Date of hearing : 16.06.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 **("CPC"),** Naeem Afzal **("Appellant/Plaintiff")** has assailed the Order dated 17.12.2024 **("Impugned Order")** passed by the learned Civil Judge 1st Class, East-Islamabad **("Trial Court")** whereby the right of the Appellant/Plaintiff to produce his evidence is struck off under Order XVII, Rule 3, CPC and suit was dismissed.

2. The brief facts giving rise to the filing of the instant Regular First Appeal are that the Appellant/Plaintiff filed a suit for declaration/separate possession through pre-emption under Sections 226 and 228 of the Muslim Law of Pre-emption, before the learned Trial Court. The suit was contested by the Respondents/Defendants through written statements. On 05.03.2024, issues were framed by the learned Trial Court, and the case was fixed for the Appellant's/Plaintiff's evidence on 27.04.2024. Due to the non-production of evidence by the Appellant/Plaintiff, the learned Trial Court, vide the Impugned Order under Order XVII, Rule 3, CPC, struck off the right of the Appellant/Plaintiff to produce his evidence and dismissed the suit due to want of evidence. Being aggrieved by the Impugned Order, the Appellant/Plaintiff has filed the instant Regular First Appeal.

3. The learned counsel for the Appellant/Plaintiff submits that the Impugned Order is contrary to law and facts, based on assumptions, and reflects misreading and non-reading of the record. It is argued that under pre-emption laws, the testimony of the postman is essential; however, despite request, the learned Trial

Court failed to summon him and passed the Impugned Order in disregard of legal principles. The Appellant/Plaintiff complied with the Court's direction by depositing one-third of the sale consideration (Rs. 1,433,334/-) and submitted relevant receipts, which were ignored. The Appellant/Plaintiff had also reserved the right to produce necessary evidence, but the learned Trial Court closed this right and declared the application infructuous, in violation of the principle that cases should be decided on merits rather than technicalities. The Impugned Order lacks reasoning, was passed arbitrarily, and has resulted in a miscarriage of justice. Therefore, the Appellant/Plaintiff prays that the appeal be accepted, the Impugned Order be set aside, the postman be summoned as a Court witness, the Appellant/Plaintiff be allowed to produce evidence, and the suit be decreed in toto.

4. The learned counsel for the Respondents/Defendants submitted that the learned Trial Court has passed a well-reasoned order; that the Appellant/Plaintiff 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 dismissal of the present Regular First Appeal.

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

6. Perusal of the order sheet of the learned Trial Court reflects that on 05.03.2024, issues were framed and the case was fixed for the Plaintiff's evidence on 27.04.2024. On 10.06.2024, on the request of the Appellant's/Plaintiff's counsel, the case was adjourned to 09.07.2024. On 09.07.2024, the Appellant/Plaintiff and one PW, namely Nadeem Afzal, were present, but their counsel was absent, due to which the case was adjourned to 14.09.2024. On 14.09.2024 and 17.10.2024, due to the unavailability of the Presiding Officer, the case was adjourned to 09.11.2024 and then to 19.11.2024. On 19.11.2024, due to the non-availability of Appellant's/Plaintiff's witnesses, the case was adjourned to 17.12.2024 with costs of Rs. 5,000/- and notice under Order XVII, Rule 3, CPC was issued to the Appellant/Plaintiff. On 17.12.2024, the case was fixed for recording of the Appellant's/Plaintiff's evidence. The Appellant/Plaintiff filed an application seeking leave to summon the postman as a Court witness and requested further time to produce evidence. Due to continued non-production, the learned Trial Court struck

off the Appellant's/Plaintiff's right to produce evidence under Order XVII, Rule 3, CPC and dismissed the suit vide the Impugned Order dated 17.12.2024.

7. The learned Trial Court granted ample opportunity to the Appellant/Plaintiff to produce his witnesses, but he failed to do so. The Court even imposed costs to compel compliance. Ultimately, the right to produce evidence was struck off. In this regard, reliance is placed on the recent order of the august Supreme Court of Pakistan passed 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:*
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> > 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.'*
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> *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.'*
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> *Though, it is a settled law that evidence of a party cannot be closed under Order XVII, Rule 3, C.P.C 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."*

8. Reliance is further placed on judgments reported as *Lutfullah versus Muhammad Aslam Sheikh,* **PLD 2024 Supreme Court 887**, *Duniya Gul versus Niaz Muhammad,* **PLD 2024 Supreme Court 672**, *Moon Enterprizer CNG Station, Rawalpindi versus Sui Northern Gas Pipelines Limited,* **2020 SCMR 300**, and *Rana Tanveer Khan versus Naseer ud Din,* **2015 SCMR 1401**. The learned Trial Court provided several opportunities to the Appellant/Plaintiff to produce evidence in support of his claim, but he failed to avail them. Therefore, the learned Trial Court had no option but to strike off the Appellant's/Plaintiff's right to produce evidence and record his statement, as the law favours the vigilant, not the indolent.

9. The Appellant/Plaintiff filed a suit for pre-emption against the Respondents/Defendants but failed to enlist the name of the postman in the list of

witnesses and also failed to annex a copy of the Acknowledgment Due Card with the plaint. The right of pre-emption is not a vested right, and in such suits, each and every minute details are to be mentioned in the plaint but in the instant case, the Appellant/Plaintiff has failed to annex any proof of having communicated his intention to exercise the right of pre-emption to the Respondents/Defendants. In these circumstances, the instant Regular First Appeal, being devoid of any merits, is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of June 2025.

JUDGE

Sajid