JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CIVIL REVISION NO. 62 OF 2025

M/S NEST CITY

VS

NAEEM KHAN & SONS ETC

Petitioner by : Ch. Abdur Rahman Nasir, Advocate.

Respondents by : Ch. Muhammad Afzaal, Advocate for the Respondent No.1.

Date of hearing : 29.04.2025

MUHAMMAD AZAM KHAN, J.

1. The Petitioner/Defendant No. 1 No. 1 has filed the instant Revision Petition under Section 115 of the Code of Civil Procedure, 1908 ("CPC") against the Order dated 21.01.2025 **("Impugned Order")** passed by the learned Civil Judge 1st Class-West, Islamabad **("Trial Court")**, whereby the right of the Petitioner/Defendant No. 1 to lead evidence and the right of cross-examination was closed under Order XVII, Rule 3 CPC.

2. The brief facts giving rise to the instant Revision Petition are that Respondent No.1 filed a suit for recovery of an amount of Rs.1,051,636,430/- as liquidated, special, and general damages for breach of an agreement dated 02.11.2016, & permanent injunction, before the learned Senior Civil Judge (West), Islamabad, which was contested by the Petitioner/Defendant No. 1 by filing a written statement. Issues were framed, and thereafter, parties were directed to produce their respective evidence. Respondent No.1/Plaintiff, in support of his case, produced his attorney, namely Umar Naeem Khan, as PW-1 on 17.10.2023, who was cross-examined by the learned counsel for the Petitioner/Defendant No. 1 No.1 on 25.04.2024. Thereafter, the evidence of Respondent No.1/Plaintiff was closed on 27.05.2024, and the matter was adjourned for the evidence of Petitioner/Defendant No. 1. On 31.10.2024, the examination-in-chief of the CEO of Petitioner/Defendant No. 1 company was recorded as DW-1**.** Thereafter, despite giving sufficient opportunities, he did not appear before the Trial Court for cross-

examination. Resultantly, the right of evidence as well as the right of cross-examination of DW-1 was closed by the learned Trial Court vide the Impugned Order dated 21.01.2025. Being aggrieved by the Impugned Order, the Petitioner has filed the instant Revision Petition.

3. The learned counsel for the Petitioner submits that the Impugned Order is against the law and facts of the case; that it is a settled principle of law that the case must be decided on facts and merits, rather than on technicalities; that the learned Trial Court passed the Impugned Order dated 21.01.2025 in a very hasty manner, which is against principles of natural justice; that the Impugned Order resulted in a great miscarriage of justice and deprived the Petitioner of his valuable rights to a fair trial under Article 10-A of the Constitution of Islamic Republic of Pakistan; that the learned Civil Judge failed to apply his judicial mind while not accepting the application for adjournment on the basis of the health issues of the Petitioner; that the Impugned Order has been passed in a slipshod manner as the Petitioner has been condemned unheard; that the learned Trial Court acted in a manner which amounted to a material irregularity, or rather, an illegality that cannot be sustained under the principles of natural justice. Lastly, the learned counsel prayed for acceptance of the instant Civil Revision, setting aside of the Impugned Order, and granting of the lawful right of evidence and right of cross-examination.

4. The learned counsel for Respondent No.1 submitted that the Impugned Order was passed after considering the facts and the record of the case, and that the learned Trial Court issued a well-reasoned order; that there is no illegality or irregularity in the Impugned Order. The learned counsel, therefore, prayed for the dismissal of the present Civil Revision Petition.

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

6. Respondent No.1 filed a suit for recovery on 15.04.2017 for an amount of Rs.1,051,636,430/- as liquidated, special, and general damages for breach of an agreement dated 02.11.2016, & permanent injunction against the present Petitioner and others. Written statements were submitted, issues were framed, Plaintiff/Respondent No.1 produced evidence, and the same was closed on

27.05.2024. The case was then fixed for the Defendant's evidence, for which several opportunities were given, and the matter was adjourned subject to payment of costs with final warnings to produce evidence. On 31.10.2024, the statement of DW-1 was recorded, and the case was fixed for cross-examination on DW-1 for 21.11.2024. On 21.11.2024, proxy counsel appeared on behalf of the parties, DW-1 also failed to appear, hence the case was adjourned to 03.12.2024. On 03.12.2024, proxy counsel again appeared on behalf of the parties, and DW-1 was again absent; the case was fixed for 21.12.2024. On 21.12.2024, DW-1 remained absent; thus, the learned Trial Court issued notice under Order XVII, Rule 3 CPC, and the case was fixed for 13.01.2025. On 13.01.2025, proxy counsel for the Petitioner/Defendant No. 1 and counsel for the Plaintiff/Respondent No. 1 appeared, but on that day too, DW-1 failed to appear; thus, the learned Trial Court imposed a fine of Rs.5,000/- and issued a final notice under Order XVII, Rule 3 CPC. On the next date i.e., 21.01.2025 (Impugned Order), proxy counsel appeared on behalf of the Petitioner/Defendant No. 1, while counsel for the Plaintiff/Respondent No. 1 also appeared, and despite final notice under Order XVII, Rule 3 CPC, the said DW-1 failed to appear on the plea that he was not feeling well. However, the proxy counsel for the Petitioner/Defendant No. 1 failed to submit any medical prescription along with his application for adjournment. On that day, the learned Trial Court closed the evidence of the Petitioner/Defendant No. 1 and the right of cross-examination on DW-1 under Order XVII, Rule 3 CPC, and the case was fixed for final arguments on 28.01.2025.

7. The learned Trial Court has given ample opportunity to the Defendants to produce their witnesses after the examination-in-chief of DW-1 was recorded on 31.10.2024, but they failed to produce the same. Even the counsel on behalf of the Defendants failed to appear before the Court and opted to be represented through proxy counsel on each subsequent date. The learned Trial Court imposed costs to compel the Defendants to produce their witnesses, and ultimately, their right of evidence 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, 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 the judgments reported as **2024 SCMR 887**, **PLD 2024 SC 672**, **2020 SCMR 300**, and **2015 SCMR 1401**. The learned Trial Court, after affording several opportunities to the Petitioner/Defendant No. 1 to produce his evidence in support of his claim, found that he failed to do so. Therefore, the learned Trial Court was left with no other option but to proceed further to decide the case on the available evidence, as the law favours the vigilant and not the indolent.

9. For the foregoing reasons, the instant Civil Revision Petition is found to be without merit and is hereby **dismissed** accordingly**.**

(MUHAMMAD AZAM KHAN)
JUDGE

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

JUDGE

"/Mehboob/"