JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD, JUDICIAL DEPARTMENT

Writ Petition No.2029 of 2017

Capital Development Authority (CDA)

Versus

Muhammad Nawaz and others

Petitioner by:	Mr. Muhammad Nazir Jawad, Advocate.
Respondents by:	Ex-parte.
Date of Hearing:	**03.06.2025.**

INAAM AMEEN MINHAS, J:- This petition is directed against the judgment dated 27.01.2016 **("Impugned Judgment")**, passed by the learned District Judge, West-Islamabad **("Revisional Court")**, whereby the revision petition filed by the petitioner was dismissed as well as the order dated 23.04.2015 **("Impugned Order")**, passed by the learned Civil Judge 1st Class West-Islamabad **("Trial Court")**, whereby the application filed by the petitioner u/s 12(2), CPC was dismissed.

2. Brief facts are that respondents No.1 to 6 filed a civil suit on 26.08.2006 against the petitioner and respondents No.7 to 31 seeking declaration, recovery of compensation, mandatory and perpetual injunction. The suit was contested by the petitioner and respondents No.7 to 31 by way of filing written statements, the issues were framed and case was fixed for evidence of respondents No.1 to 6. During the proceedings, both the parties requested through an application that the suit may be adjourned *sine die* and vide order dated 30.03.2013, the learned Trial Court accepted the request and the case was adjourned *sine die*. Subsequently at the joint request of the parties on 16.04.2013, the case was retrieved from the record room and scheduled for the

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remaining evidence on 19.04.2013. Thereafter during evidence proceedings, the petitioner and respondents No.7 to 31 did not appear before the learned Trial Court, therefore, on 23.10.2013 their right of cross-examination was struck off and on 02.11.2013 due to their absence, they were proceeded against ex-parte and finally an ex-parte judgment and decree was passed on 29.11.2013 in favour of respondents No.1 to 6, which was assailed by way of filing an application u/s 12(2), CPC, which was dismissed vide the Impugned Order, against which the petitioner filed a revision petition before the learned Revisional Court, which was also dismissed vide the Impugned Judgment, hence, this writ petition.

3. Despite publication in the newspaper Daily Express, no one appeared on behalf of the respondents, therefore, vide order dated 07.05.2025, they were proceeded against ex-parte.

4. The learned counsel for the petitioner contended that the Impugned Judgment and the Order are against the law and facts of the case; that factual controversy is involved in the matter, whereas ex-parte judgment and decree were obtained through concealment of the facts and fraud without affording the petitioner a fair opportunity for production of its evidence; that after retrieving of the suit, no notice Pervi was issued to the petitioner; that the learned Trial Court did not frame issues on the application u/s 12(2), CPC; that the cases should be decided on merits and not on the technicalities and that the Impugned Judgment and the Order have resulted grave miscarriage of justice.

5. I have heard the learned counsel for the petitioner and perused the record.

6. Perusal of the record reveals that respondents No.1 to 6 filed a civil suit against the petitioner along with respondents No.7 and 31 seeking declaration, recovery of compensation, mandatory and perpetual injunction. The petitioner along with the other respondents, formally contested the suit by submitting written statements. Given the

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conflicting claims of the parties, the learned Trial Court framed the necessary issues for trial and scheduled the case for the recording of evidence of respondents No.1 to 6 and thereafter statements of two witnesses, PW1 Muhammad Nawaz and PW2 Muhammad Ismail were recorded. However, on 30.03.2013, the proceedings were indefinitely adjourned *sine die* on the written request of the parties. Later, on 16.04.2013 a joint request was made by both the parties, the case was reinstated and scheduled for hearing on 19.04.2013. The record further shows that the petitioner and the other respondents attended the hearings on several dates including 19.04.2013, 25.04.2013, 06.05.2013, 27.05.2013, 01.06.2013, 07.06.2013, 21.06.2013, 18.09.2013, 01.10.2013 and 09.10.2013. On 15.05.2013 examination in chief of PW3 Muhammad Sabir was recorded and the matter was adjourned for cross-examination on PW3 for numerous dates on the request of the learned counsel for the petitioner and other respondents. On 23.10.2013, the petitioner and other respondents did not appear, therefore, their right of cross-examination was struck off and the matter was adjourned to 02.11.2013 for evidence of the petitioner and other respondents. On the said date the petitioner and other respondents did not appear, therefore, they were proceeded against ex-parte. Subsequently, an ex-parte judgment and decree were passed on 29.11.2013. The record clearly establishes that the petitioner was well aware of all proceedings as on the above mentioned dates the petitioner and other respondents remained present before the learned Trial Court through their legal counsels or the clerk counsels after reinitiating of the proceedings, therefore, the claim of the petitioner that the ex-parte judgment and decree was passed without giving it opportunity of hearing and that ex-parte judgment and decree were passed through concealment of facts and fraud is not justified.

7. The petitioner later challenged the ex-parte judgment and decree by filing an application u/s 12(2) read with Order IX, Rule 13, CPC. The grounds raised in the application u/s 12(2) CPC were that at the stage of recording evidence of respondents No.1 to 6, the case had been

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indefinitely adjourned (*sine die*) on 30.03.2013 and subsequently restored/retrieved from the record room on 16.04.2013. It was further contended that on 23.10.2013, the petitioner's right to cross-examine PW3 (one of the witnesses) was struck off, and the case proceeded ex-parte without giving the petitioner a fair hearing. Both the learned Trial Court and the Revisional Court, after examining the complete record, found that the proceedings had been conducted in accordance with the law. The Courts below also noted that the petitioner had initially participated in the proceedings, including submitting a written statement and being involved during the evidence stage. Still, they later failed to appear or actively pursue the case. This conduct, particularly the absence at critical stages, was considered a deliberate act that delayed the judicial process. The Courts below have rightly concluded that the petitioner had been given several opportunities but remained negligent and inattentive. Therefore, the ex-parte decree granted in favour of respondents 1 to 6 was justified and there is no illegality or irregularity in the Impugned Judgment and the Order passed by the Courts below.

8. Additionally, the petitioner filed the instant writ petition on 29.05.2017, whereas the Impugned Judgment was passed by the learned Revisional Court on 27.01.2016 as such the instant writ petition was filed with delay of almost one year and four months along with the application for condonation of delay on the ground that on the next date i.e. 28.01.2016 the petitioner applied for copy through copy form No.2401 and the same was entered in copy branch and that the copy form and the Court file could not be traced for long time is not justified as the petitioner has not provided any concrete evidence or official record, which could substantiate its claim. As a result, this writ petition is clearly barred by the principle of laches, which means that a party which fails to act within a reasonable time cannot later seek relief. Courts are generally reluctant to entertain delayed petitions unless there is a strong, valid reason supported by credible evidence. In this case,

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neither the reason nor the supporting evidence meets the legal standard necessary to condone such a prolonged delay.

9. It is a well-established legal principle that while exercising its constitutional jurisdiction, the High Court does not act as an appellate or revisional Court. Moreover, against the concurrent findings this Court cannot interfere in constitutional jurisdiction until there is material illegality in the orders/judgments of the Courts below.

10. In view of the above discussion, both the Courts below have passed the Impugned Judgment and the Order in accordance with law, which do not call for interference by this Court. The instant writ petition bears no merits, therefore, the same is **dismissed.**

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 27.06.2025.

JUDGE

R.Anjam

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