JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Civil Revision No. 315 of 2018
Muhammad Imran Khan
Versus
District Judge, Islamabad-West, etc.

Petitioner by: Mr. Naseer Anjum Awan, Advocate,
Respondent No.3 by: Mr. Muhammad Arshad Raja, Advocate,
Date of Hearing: 16.03.2021.

FIAZ AHMAD ANJUM JANDRAN, J.- Through instant Civil Revision Petition (**the petition**) petitioner questions judgment and decree dated 03.04.2017 & 09.09.2017, passed by the learned Civil Judge 1st Class and learned District Judge Islamabad-West respectively, whereby suit for recovery of Rs.1760,096/- filed by the petitioner was dismissed for want of evidence under Order XVII Rule 3 of the Code of Civil Procedure (**the Code**).

2. Essential and relevant facts for adjudication of the petition are that the petitioner filed suit for recovery of Rs.1760,096/- on account of outstanding rent against the respondent No.3. Respondent No.3 filed written statement and out of divergent pleadings of the parties, issues were framed on 15.01.2016. Thereafter, case remained pending for evidence of the petitioner/plaintiff but finally on 03.04.2017 penal provisions i.e. Order XVII Rule 3 of the Code was invoked and suit was dismissed for want of evidence. Position remained the same in appeal filed by the petitioner, hence the petition.

3. Learned counsel for the petitioner contends that when no one appeared from either side, learned trial Court was required to dismiss suit for non-prosecution instead of passing the impugned order; that penal provisions could not be invoked in the peculiar factual/legal position; court was required to apply Order XVII Rule 2 of the Code.

4. On the other hand, learned counsel for respondent No.3 contended that more than one dozen opportunities were provided to the petitioner and in given circumstances, there was no option with the court except to pass the order which had been passed; if further opportunity is provided to the petitioner that would amount to wastage of precious time of the courts.

5. Heard the learned counsel for the parties and examined the record with their able assistance.

6. Material available on record has been examined judicially and it is noticed that issues were settled on 15.01.2016 and thereafter, matter was fixed for recording of evidence for 16.02.2016. The following table would show that what remained the position for production of the evidence of the petitioner/plaintiff:-

1.	16.02.2016	Plaintiff's evidence was not present
2.	14.04.2016	Plaintiff's evidence was not present
3.	15.06.2016	Plaintiff's evidence was not present
4.	03.10.2016	Plaintiff's evidence was not present
5.	23.01.2017	Plaintiff's evidence was not present
6.	31.01.2017	Plaintiff's evidence was not present
7.	08.02.2017	Plaintiff's evidence was not present
8.	07.03.2017	Plaintiff's evidence was not present
9.	28.03.2017	Plaintiff's evidence was not present

7. When notice under section 17(3) of the Code is given to the parties then parties in general and the relevant party to whom notice has been issued is fully cognizant of the fact that if on the said date, compliance of the order is not made then penal provision of the Code would follow. If it is held that despite issuance of the notice when parties are not in attendance instead of proceeding with in the light of previous date notice, the case is required to be dismissed for non-prosecution, would amount to abolish and finish the rationale behind the jurisprudence of issuance of the notice on preceding date.

8. This Court has come to the conclusion that when a notice was issued on previous date then on the said/coming date the first step liable to be taken by the Court is to proceed with the matter in the light of already issued notice and thereafter proceed with the matter on any other account.

9. Record shows that not only on one date but on previous two consecutive dates i.e. on 07.03.2017 & 28.03.2017 notice was issued and thereafter, matter was fixed for 03.04.2017 i.e. third date wherein position remained the same and the penal provision was invoked.

10. No ambiguity remains in the matter that petitioner is neither vigilant nor interested to proceed with the matter in accordance with law. No doubt, matters are required to be decided on merits but obviously instant destination of final adjudication is only possible when petitioner/plaintiff who is under an obligation to prove his case on his legs, is interested to proceed with the matter but facts of the case

at hand fully establishes that petitioner was not interested in proceeding with the matter.

11. Needless to be mentioned that scope of the revisional jurisdiction in concurrent findings is very limited and same could not be interfered with unless any illegality floating on the surface of record or misreading or non-reading of evidence is pointed out. In this respect guidance is sought from the pronunciation of the Hon'ble Supreme Court of Pakistan reported as ***"Haji Wajdad v. Provincial Government through Secretary Board of Revenue Government of Balochistan, Quetta and others"*** *(2020 SCMR 2046),* ***"Sui Southern Gas Company Limited, Karachi v. Imdad Ali Pathan and others"*** *(2020 SCMR 1259),* "***Shahbaz Gul and others v. Muhammad Younas Khan and others"*** *(2020 SCMR 867),* "***Mst. Zaitoon Begum v. Nazar Hussain and another"*** *(2014 SCMR 1469),* "***Messrs A.C.P. Oil Mills (Pvt.) Limited v. The Additional Collector of Customs (Appraisement) and another"*** *(2013 SCMR 638),* "***Noor Muhammad and others v. Mst. Azmat-e-Bibi"*** *(2012 SCMR 1373).*

12. In the light of above discussion, instant civil revision petition lacks merits and is **dismissed**. No order as to costs.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

Announced in open Court on **13.04.2021**.

JUDGE