ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD JUDICIAL DEPARTMENT

Civil Revision No.134 of 2014

Afzal Hassan Khan

Vs.

Ch. Akhtar

S.No. of order/ proceedings	Date of Order/ Proceedings	Order with signature of judge and that of parties or counsel where necessary.
	24.04.2014	Mr. Sher Afzal Khan, Advocate for the petitioner.

Through the instant civil revision, the petitioner has made the following prayer:-

"In the light of the submissions made hereinabove, it is prayed that upon acceptance of instant Civil Revision, the impugned order passed in appeal dated 08.4.2014 and exparte orders passed by learned trial Court dated 29.01.2013 and exparte decree dated 06.04.2013 passed by learned trial Judge may graciously be set aside and the matter may graciously be remanded for deciding the matter afresh

after affording to petitioner an opportunity to file written statement."

2. Facts of the case out of which this civil revision has arisen are that the respondent filed a civil suit for recovery of a sum of Rs.589152/- as outstanding rent against the petitioner, which was entrusted to Mr. Rasool Bakhsh Mir Jutt, Civil Judge, Islamabad. The petitioner put his appearance before the learned trial Court, but could not file written statement. Ultimately, on 29.01.2013, the learned trial Court passed order under Order 8 Rule 10 C.P.C. striking off the right of the petitioner to file written statement. Thereafter, exparte judgment and decree were passed on 08.4.2013. The petitioner filed application under Order 9 Rule 13 C.P.C. but the same was subsequently withdrawn as the said remedy was not efficacious and preferred an appeal before the learned District Judge, but the same was also dismissed in limine on 08.4.2014, hence this civil revision.

3. Learned counsel for the petitioner contended that the learned appellant Court has acted in haste, without hearing the petitioner on the point of limitation and while passing the impugned order application for condonation of

delay was ignored. The entire proceedings were corum-non-judice and thus void ab initio. The petitioner has been condemned unheard. All the impugned orders are against the law; that neither proceedings were fixed for filing of written statement nor could in the absence of the petitioner an order in terms of Order 8 Rule 10 C.P.C. could be passed as at the most the learned trial Court could have proceeded exparte against the petitioner.

4. I have heard the learned counsel for the petitioner and perused the material made available.

5. It is an admitted fact that the petitioner had been appearing before the learned trial Court, but he could not submit his written statement. On 20.11.2012, the petitioner was directed to submit written statement. Subsequently, on 15.12.2012 and 12.1.2013 the petitioner could not submit the written statement. Lastly on 29.1.2013 again he did not submit written statement, so his right to submit written statement was struck off and thereafter exparte judgment and decree was passed. Subsequently, the petitioner filed application for setting aside exparte judgment and decree but the same withdrawn. The petitioner preferred an

appeal against the orders dated 29.1.2013 and 18.4.2013, which was dismissed in limine by the learned Additional District Judge on the same day i.e 08.4.2014. From the record it appears that the appeal filed by the petitioner was hopelessly barred by limitation. Even no plausible ground was agitated in the application for condonation of delay. On failure of the petitioner to file written statement, there was no option left with the trial Court except to struck off his defence and then to pass exparte judgment and decree. From the record it is very much clear that the conduct of the petitioner remained contumacious during the entire proceedings as he did not seriously tired to contest the matter. There appears no illegality or irregularity in the impugned orders, which are otherwise quite in consonance with law.

6. For what has been discussed above, this civil revision is devoid of merits, so the same is **dismissed** in limine.

Noor-ul-Haq-N. Qureshi
Judge

Sabir