IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Yahya Afridi
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Irfan Saadat Khan

Civil Petition No. 2849-L of 2015
Against the order dated 07.9.2015 passed by Lahore High Court, Lahore in CR No.1434/1 of 2009

Lutfullah Virk ...*Petitioner(s)*

Versus

Muhammad Aslam Sheikh ...*Respondent(s)*

For the Petitioner(s): Ch. Muhammad Zafar Iqbal, ASC
(via video-link, Lahore)

For the Respondent(s): Not Represented

Research Assistance: Ahsan Jehangir Khan, Law Clerk.

Date of Hearing: 03.7.2024

JUDGMENT

Irfan Saadat Khan, J.- The facts pertaining to the lis at hand are fairly simple. The Petitioner is a Defendant in a suit for recovery of damages before the Court of the Senior Civil Judge, Lahore. The Examination-in-Chief of the Plaintiff's witnesses (who is the Respondent in this matter) was fixed for 09:30 AM on 14.07.2005. The present Petitioner marked his presence on the cause-list for the day but did not appear at the time fixed by the Court for the Examination-in-Chief. Be that as it may, the present Respondent's three witnesses got their Examination-in-Chief recorded before the Court and the Court, keeping in mind the principles of natural justice, decided to wait for the present Petitioner to cross-examine the aforementioned three witnesses produced by the present Respondent. The Court waited up until 01:00 PM but the counsel for the Defendant did not show up. Therefore, the trial Court closed the right of the Defendant for cross-examination, vide Order, dated 14.07.2005.

2. Aggrieved by the Order, dated 14.07.2005, the Defendant, who is the present Petitioner, filed Civil Revision No. 1434/I of 2009 before the Lahore High Court, Lahore. The High Court dismissed Civil Revision No. 1434/I of 2009, of the present Petitioner, in the following terms:

> "On 14.07.2005, when the witnesses of plaintiff were before the Court and time of recording their evidence was fixed as 9:30 a.m., the defendant was awaited but on account of non-appearance of the defendant or his learned counsel, after recording examination-in-chief of the witnesses, the right to cross-examine such witnesses by the defendant was closed. No exceptional circumstances exist in favour of the petitioner warranting interference of this Court in such just and lawful decision. No illegality has been found by closing the right of the defendant/petitioner for cross-examining the witnesses of plaintiff.
>
> 2. There is no substance in the petition and the same is dismissed."

3. It is the aforenoted judgment passed in Civil Revision No. 1434/I of 2009 by the Lahore High Court, Lahore, dated 07.09.2015, that has been impugned before us by way of this CPLA No. 2849/L/2015.

4. Ch. Muhammad Zafar Iqbal, ASC appeared, via Video-Link, before us on behalf of the Petitioner and at the outset contended that the High Court while passing the impugned judgment had not properly comprehended the points of law and facts involved in the case and therefore had rendered a judgment which was not sustainable in the eyes of the law. The learned counsel for the Petitioner further contended that the High Court had failed to apply its independent and judicious mind to the matter at hand, which had resulted in a misreading of the record and the law; hence, was liable to be set aside. Finally, the learned counsel prayed for Leave to Appeal to be granted against the impugned judgment.

5. The Respondent was not represented. However, we have heard the arguments of the learned counsel for the Petitioner and have perused the record with his assistance.

6. Although, the learned counsel for the Petitioner repeatedly stated that the High Court had failed to appreciate the points of law and facts involved in the case, he could not point out any specific point of law or fact which had not been considered by the High Court in the impugned judgment. The record shows that on 27.04.2005, an adjournment was sought by both the parties to the suit for recovery of damages, and the matter was adjourned for 31.05.2005. When the case was taken up on 31.05.2005, an adjournment was sought by the Counsel of the Plaintiff (the Respondent) citing the reason that the

Plaintiff was unwell. Thereafter, the Court vide Order dated 31.5.2005 in a very judicious and fair manner granted and allowed last and final opportunity to both the parties and in the same Order directed that the Examination-in-Chief of the Plaintiff would take place on 14.07.2005 at 09:30 AM. As noted above, the Plaintiff produced three witnesses, on 14.07.2005 at 09:30 AM, who recorded their Examination-in-Chief, but the Defendant's counsel did not show up at all, despite the fact that the Court waited until 01:00 PM on 14.07.2005. When confronted with these facts, as reflected by the record, the learned counsel for the Petitioner, could neither point to any specific or cogent reason nor controvert as to why the Defendant had failed to show up for the Examination-in-Chief on 14.07.2005.

7. It is unfortunate that adjournments have become a plague for the country's justice system. On 31 December 2023, a net pendency of 2.26 million cases was reported in the country and 1.86 million of the cases out of the total pendency, which is around 82%, are pending adjudication before the District Judiciary.[1] And despite this mammoth pendency, which undoubtedly has only grown since 31 December 2023, the adjournment culture continues unabated - which robs litigants of the right to speedy justice and further exacerbates the inefficient judicial system crisis. The failure of the courts to deal promptly with backlogs involves very human consequences: controversies are prolonged; hard feelings emphasized; families suffer privation from their inability to obtain relief.[2] As a result, people seeking relief become embittered and hate the courts and the law because the legal profession has not lived up to its responsibilities in a field where its responsibilities are primary and almost exclusive.[3]

8. Having said that, adjournments cannot be used as a delaying tactic nor can they be demanded as a matter of right, and yet the reality is quite different. Recently, this Court, in *Duniya Gul*[4] observed:

> "There is a prevalent and concerning trend of frequent adjournment requests in lower courts, which amounts to an abuse of the process of the court. This practice has significantly contributed to a substantial backlog of litigation in the lower

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[1] *Judicial Statistics*, 2nd Bi-Annual Report July to December 2023, Law and Justice Commission of Pakistan. <http://www.ljcp.gov.pk/reports/bar.pdf>

[2] Nims, Harry D. "Backlogs: Justice Denied." *American Bar Association Journal* 42, no. 7 (1956): 613–86. <http://www.jstor.org/stable/25719672>

[3] ibid.

[4] Duniya Gul v. Niaz Muhammad (PLD 2024 SC 672)

> judiciary. It is imperative that we actively discourage this behavior to ensure the prompt delivery of justice to the citizens of Pakistan. By curbing the routine use of adjournments, we can expedite legal proceedings, alleviate the burden on the lower judiciary, and ultimately enhance the efficiency of the judicial system. This, in turn, will contribute to a more timely and effective resolution of legal matters, promoting access to justice for all."

9. Rules 1 to 3, of Order XVII of the Code of Civil Procedure, 1908 ("**CPC**") which deal with adjournments, and are relevant to the matter at hand, state:

> "**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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> **Costs of adjournment: (2)** In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:
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> Provided that when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in the attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.
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> **2. Procedure if parties fail to appear on day fixed:** Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such order as it thinks fit.
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> **3. Court may proceed notwithstanding either party fails to produce evidence, etc.:** Where any party to a suit to whom time has been granted failed to produce his evidence, or to cause the attendance of his witnesses, 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."

As noted herein above, adjournments cannot be demanded as a matter of right and Rule 1 of Order XVII of CPC, as reproduced above, is perspicuous in this regard, as a Court "may" grant time and adjourn, and that too if "sufficient cause is shown." It is only logical that this sufficient cause may only be shown by way of an application in writing, meaning that any party to a suit or any other proceeding before a Court, can request an adjournment only if it satisfies the Court by way of submitting an application for adjournment in writing, along with evidence attached of the predicament or ailment that they are facing, for which an adjournment is the only solution. It is then up

to the Court, whether to accept the adjournment application or to proceed with the matter at hand. If the Court is to accept the adjournment application then it must immediately decide on whether or not to impose costs to the party requesting an adjournment. The decision on costs is necessary for multiple reasons. Frivolous adjournments incur a significant cost, and are a gross misappropriation of the already limited Court funds and facilities; the cost of a court to be in session, the salaries of all parties involved and maintenance of the courtroom are just a few of the expenditures and facilities which are not being utilized every time there is an adjournment granted on dubious grounds; it is also an unjust and inexcusable charge on the litigant's pocket; as many parties to the suit suffer great losses in the form of travel costs, opportunity costs, and daily wages; furthermore, an unseen but deeply felt social and psychological cost is also borne by litigating parties.[5] It is pertinent to state here that once a decision on whether or not to impose costs for seeking an adjournment has been taken, the Court has to record the reasons for granting an adjournment and why or why not costs have imposed on a party which sought adjournment.

10. On the flipside, what happens when a Court does not allow a request for adjournment? The matter is to proceed as envisioned in Rule 3 of Order XVII of CPC. Rule 3 uses etcetera at the end of its title, which would encompass everything else apart from production of evidence, and further states that if any party to a suit fails to "perform any other act necessary to the further progress of the suit, for which time has been allowed" the Court "notwithstanding such default, proceed to decide the suit forthwith."

11. If the above is applied to the matter at hand, then it translates into the following: had the present Petitioner, on 14.07.2005, tendered in an application for adjournment, it would have been up to the Court to decide whether or not to grant the adjournment. If the Court agreed on granting the adjournment, it would have had to make an instant decision on whether or not to impose costs. Reasons for granting adjournment and imposition of costs would have to be recorded. If the Court did not agree on granting an adjournment, then it would have to record the reasons for not doing so, and the matter would have

[5] *Arbitrary Adjournments*, Discourse 2023, Sahar Saqib. <https://pide.org.pk/research/arbitrary-adjournments/>

proceeded in the way it already did, that is, Examination-in-Chief of the Respondent's witnesses was recorded and the Petitioner's right to cross-examine the said witnesses would be closed.

12. However, the facts of the matter at hand are slightly different. Two adjournments were entertained by the trial Court, one on 27.04.2005 and one on 31.05.2005. Therefore, the only options available to the Court, vis-à-vis the matter before it, are in Rules 2 and 3 of Order XVII of CPC. Rule 2 states that if a party has failed to appear on a date to which a matter was adjourned, then the Court can either "dispose of the suit in one of the modes directed in that behalf by Order IX or make such order as it thinks fit." Since, the Court did not dispose of the suit, it could only make such order as it thought fit. This Order was to close the present Petitioner's right to cross-examine the witnesses of the Respondent.

13. Furthermore, the Court's Order, of 14.07.2005, which closed the present Petitioner's right to cross-examine the witnesses of the Respondent, also enjoys the protection of Rule 3 of Order XVII of CPC. As per Rule 3 if any party to a suit to whom time has been granted, in this case the Petitioner, who was granted time by the Court on 31.05.2005, up until 09:30 AM of 14.07.2005, fails to produce evidence, cause attendance of his witnesses, or to "perform any other act necessary for the progress of the suit, for which time has been allowed" the Court may then "notwithstanding such default, proceed to decide the suit forthwith." The term "decide the suit forthwith" over here does not imply that the Court is to reach a decision on the *lis* before it on the same day, holding that would result in a violation of the fundamental right to a fair trial guaranteed by Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 ("**the Constitution**"). Rather, the term "decide the suit forthwith", implies that the suit is now to be decided without delay, meaning that further adjournments cannot be granted to the party which had already been allowed time to produce evidence, cause attendance of his witnesses, or perform any other act necessary for the progress of the suit. A similar view was taken by this Court in *Muhammad Aslam*[6]:

> "It may be pointed out here that though under Order XVII, rule 3, C.P.C. it has been provided that where sufficient cause is not shown for the grant of adjournment the Court may proceed to

[6] Muhammad Aslam v. Nazir Ahmed (2008 SCMR 942)

> decide the suit forthwith but the words used in the provision in question "proceed to decide the suit forthwith" do not mean "to decide the suit forthwith" or "dismiss the suit forthwith". The said rule simply lays down that the Court may proceed with the suit notwithstanding either, party fails to produce evidence etc. meaning thereby that in case of default to do a specific act by any party to the suit, he next step required to be taken in the suit should be taken. Though the word "forthwith" means without any further adjournment yet, it cannot be equated with the words "at once pronounce judgment, as used in Order XV, rule 4, C.P.C. ' where, on issuance of summons for final disposal of the suit either party fails, without sufficient cause, to produce the evidence on which he relies".”

Therefore, since the present Petitioner could not be allowed any further adjournments, the only logical conclusion the Court could arrive at was to close the present Petitioner's right of cross-examining the witnesses, and it did so, by Order, dated 14.07.2005.

14. It is pertinent to state here that the record reflects that the Court has upheld the fundamental Constitutional right to a fair trial of both the parties. Even on 14.07.2005, the Court quite graciously waited up until 01:00 PM before closing the right of the present Petitioner to cross-examine the witnesses of the present Respondent. Having done so in our view the Court, quite rightly, exercised the options available to it under Rules 2 and 3 of Order XVII of CPC.

15. There is another aspect of the matter, which warrants our indulgence. Suppose that the present Petitioner, who as the record shows marked his presence in the cause-list on 14.07.2005, had appeared before the Court and requested an adjournment and the said adjournment had been denied and the present Petitioner had refused to participate in the proceedings of the day, that is the Examination-in-Chief. This would again lead to the Court having the options available to it under Rules 2 and 3 of Order XVII of CPC, as a party is said to have failed to appear even if he is present in the Court and applies for adjournment, but his application is refused and he does not thereafter participate in the proceedings.[7] However, had the present Petitioner remained present to merely witness the proceedings, once his request for adjournment had been declined and he had decided not to partake in the Examination-in-Chief, the Petitioner's presence would amount to participation in the proceedings and thus

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[7] Vinod Khanna v. Bakshi Sachdev (AIR 1996 Del 32 (DB)); Gulab Devi v. Premvati (AIR 1996 All 22)

would only leave the Court to exercise the options available to it under Rule 3 of Order XVII of CPC.

16. The upshot of the aforementioned discussion is that Leave to Appeal is refused and the present Petition is hereby dismissed. The trial Court rightly closed the right of Petitioner to cross-examine the Respondent's witnesses and the High Court also quite rightly upheld the Order of the trial Court and declined to interfere by way of the impugned judgment, dated 07.09.2015.

ISLAMABAD
03.7.2024
Arshed/AJK, L.C

Approved for Reporting