

Civil Revision No.414 of 2010

FAIZ AHMAD

VERSUS

ZAHOOR-UL-HAQ SIDDIQUI etc.

13.01.2012

Muhammad Ashraf Shagufta Advocate for
Petitioner.

Mr. Akhtar Awan Advocate for Respondents.

C.M No.1-C/2012 for appointment of the receiver
moved by the respondents is not pressed and is dismissed as
such.

2. This Civil Revision is directed against an order dated
11-12-2009 passed by the learned Civil Judge 1st Class,
Lahore in a suit instituted by the present petitioner for
specific performance of an agreement whereby the right of
the petitioner to produce his witnesses has been excluded by
the learned Civil Judge by further observing that the plaintiff
can only appear himself in his evidence.

3. Briefly stating the facts of the case are that a suit for
specific performance of an agreement of sale was instituted
by the petitioner before the learned Civil Judge. This suit is
being contested by the respondents through filing a written
statement. The learned Civil Judge framed the issues in this
matter and the case was in progress when the defendants of
the suit moved an application before the learned Civil Judge
by invoking the provisions of Order XVI Rule 1 of C.P.C.
read with Section 151, C.P.C. for the dismissal of the suit on

the ground that the petitioner/plaintiff did not submit, a list of witnesses in compliance with the provisions of Order XVI Rule 1 of C.P.C., therefore, the suit be dismissed. This application was contested by the petitioner/plaintiff. The learned Civil Judge through the impugned order dated 11-12-2009 allowed the application by passing the impugned order. This civil revision is directed against the order dated 11-12-2009.

4. It is contended by the learned counsel for the petitioner that the petitioner is a plaintiff and although the petitioner did not produce the list of witnesses along with his plaint in compliance with provisions of Order XVI Rule 1 of C.P.C., but the petitioner has every right to produce the evidence of his own witnesses without utilizing the process of the Court in the matter. It is next contended that the defendants do not have any right to seek dismissal of the suit on this ground, which is a penal provision and is not incorporated in Order XVI Rule 1 of C.P.C. It is further contended that the learned Civil Judge passed the impugned order without applying his judicial mind upon the facts of the case as well as upon the statutory provisions of Order XVI Rule 1 of C.P.C.

5. Conversely, the learned counsel for the respondents has opposed this civil revision and has contended that the judgment relied upon by the learned Civil Judge referred to as *Mst. Musarrat Bibi and 2 others v. Tariq Mahmood Tariq* (1999 SCMR 799) was not favourable to the petitioner and it

laid down the law that a litigant who does not produce list of witnesses before the learned Trial Court, cannot be allowed to produce any evidence of his own. The learned counsel, however, candidly conceded that provisions of Order XVI Rule 1, C.P.C. do not envisage any power of dismissal of the suit and the application moved by the respondents/defendants in the suit was not maintainable as such.

6. I have considered the arguments of the learned counsel for the parties.

7. The petitioner/plaintiff did not move any application before the learned trial Court seeking production of any witness through the process of the Court. It is also a matter of record that the petitioner did not produce any list of witnesses along with the plaint. The application moved by the respondents under Order XVI Rule 1 of C.P.C. was moved with the following prayer:--

"Under the above mentioned facts and circumstances, it is, therefore, most humbly prayed that this application may kindly be accepted and the suit of the plaintiff may graciously be dismissed with costs".

The respondents/defendants sought dismissal of the suit from the learned Trial Court on the ground that the plaintiff/petitioner did not place on record list of witnesses as per the provisions of Order XVI Rule 1 of C.P.C. It shall be important to reproduce the Order XVI, Rule 1 of C.P.C. which reads as follows:--

"Summons to attend to give evidence or produce document.--1(1) Not later than seven days after the settlement of issues, the parties shall present in Court a (certificate of readiness to produce evidence, along with a) list of witnesses whom they propose to call either to give evidence or to produce documents."

No penal provision for the dismissal of the suit is incorporated in Order XVI, Rule 1 C.P.C. in case the plaintiff of a suit does not submit a list of witnesses in the time prescribed in the Rule, therefore, the application as moved by the defendants/respondents was misconceived and should not have been entertained by the learned Civil Judge. The case-law reported as Mst. Musarrat Bibi and 2 others v. Tariq Mahmood Tariq (1999 SCMR 799) has different facts as in the said reported judgment the right of the defendants to produce the evidence was closed and the defendant of the suit filed an application subsequently to produce the witnesses before the learned Trial Court, which application was dismissed by the learned Civil Judge and the order of the dismissal of the application was upheld. The facts of the said reported case are not relevant to the facts of the present case. In the instant case the petitioner has not so far produced any evidence and the case was fixed for allowing the petitioner/plaintiff to produce evidence when the defendants of the suit moved an application for the dismissal of the suit on the ground that the petitioner/plaintiff did not file any list of witnesses. As this application was misconceived, the learned Civil Judge without applying his mind upon the facts of the case passed an order dated 11-12-2009 of closing the right of the petitioner to produce his witnesses of his own,

which was not at all prayed for in the application moved by the respondents and which order even could not have been passed as the petitioner has every right to produce the witnesses of his own without involving the process of the Court during the trial of the case. Reliance is placed upon, Ghulam Murtaza v. Muhammad Ilyas and 3 others (PLD 1980 Lahore 495), Iqbal Parekh and 4 others v. Karachi Building Control Authority (K.B.C.A.) through Chief Controller of Buildings (C.C.O.B.) Karachi and 4 others (2008 CLC 1334) Mst. Rukhsana Bibi v. Muhammad Ansar (2006 YLR 666), Mst. Aisha Bibi v. Mst. Kaneezan Bibi and others (1988 CLC 2218), Haji Muhammad Tufail v. Muhammad Iqbal (2005 MLD 688).

8. In view of the above, this Civil Revision is allowed and the order dated 11-12-2009 is set aside. The parties to bear their own costs.

(NASIR SAEED SHEIK)
Judge