

**ORDER SHEET**  
**IN THE LAHORE HIGH COURT**  
**MULTAN BENCH**  
**MULTAN**  
**JUDICIAL DEPARTMENT**

**C.R.No.868-D-2002.**

***Muhammad Ramzan***

***Vs.***

***Muhammad Shafi, etc***

Sr. No. of order/ proceedings	Date of order/ proceedings	Order with Signature of Judge, and that of parties of counsel, where necessary.
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**CM-1428-C-2012.**

**21.04.2015. Malik Muhammad Afzal Pahore, Advocate.**

Through this application the petitioner has prayed for restoration of the above captioned civil revision, which was dismissed for non-prosecution on 21.06.2012. This application was filed on the same day, which is supported by the affidavit of learned counsel for the petitioner. Therefore, on the basis of grounds mentioned therein, C.M is allowed and main civil revision is restored to its original number.

2. Learned counsel states that he is ready to argue the case as it is one of the oldest cases, therefore, prays for fixation of the same for today. Office to fix the civil revision for hearing today.

**Main Case:**

3. Through this civil revision the petitioner has challenged the judgment & decree dated 14.06.2002 passed by the learned District Judge, Muzaffargarh, whereby the appeal filed by him was dismissed, and the

judgment & decree dated 11.02.2002 passed by the learned Civil Judge 1<sup>st</sup> Class, Muzaffargarh, whereby the suit for specific performance filed by the petitioner/plaintiff was dismissed after closing his right to produce evidence.

4. Learned counsel for the petitioner argues that no proper opportunity was granted to the petitioner-plaintiff to produce evidence and only three opportunities were given but the right to produce evidence was closed. Prays for acceptance of this civil revision and remand of the case to the trial Court.

5. I have heard the learned counsel for the petitioner and also gone through the record.

6. After restoration of the revision no notice has been issued to the other side and after hearing the learned counsel for the petitioner I am going to decide the same, as it is one of the oldest cases.

7. The suit for specific performance was filed on 11.03.2000 on the basis of an oral agreement to sell dated 01.10.1995. The written statement was filed and the agreement was denied. Issues were framed on 02.11.2000 and the petitioner/plaintiff was directed to produce his evidence. On 27.09.2001 on the request of plaintiff case was adjourned for 14.11.2001 with a fine of Rs.100/-. On 14.11.2001 once again request for adjournment was made and the case was adjourned to 11.02.2002 with a fine of Rs.100/- as well as a warning

that if the evidence is not produced on next date of hearing, his right to produce evidence will be closed. On next date of hearing i.e. 11.02.2002 the position was the same and when evidence was not produced his right to produce evidence was closed under Order XVII Rule 3 of the CPC and the suit was dismissed. Learned counsel states that on the same day an application was moved at about 12:30 p.m stating that now the witnesses of plaintiff are present but the learned trial Court noting the same fact dismissed the application. Three opportunities with clear warning and imposition of fine were granted but the plaintiff/petitioner failed to produce oral as well as documentary evidence. Therefore, learned trial Court was forced to invoke penal provisions of Order XVII Rule 3 of the CPC. Even otherwise in my view when a party is directed to do some act for progress of the proceedings of a suit and that party fails to comply with the order of Court, the Court has equal power in accordance with Lahore High Court Amendments under Order XVII Rule 1 of the CPC. If on 11.02.2002 the evidence was not available at the time of call of the suit and no reason has been given that why on the last two dates of hearing the evidence was not available, the Court was competent to pass an order under Order XVII Rule 1 of the CPC. In this context light can be taken from the judgments reported as "1987 Law Notes (SC) 532 (Pirzada Amir Hussan etc

vs. Mrs. Shamim Shah Nawaz etc) and **2002 CLC 1111**  
(Ghulam Qadir alias Qadir Bakhsh Vs. Haji Muhammad  
Suleman and 6 others)”. When no sufficient cause is  
shown for grant of adjournment, the Court shall proceed  
with the suit forthwith. I have noticed that the Court  
granted sufficient opportunities before invoking the  
penal provisions of Order XVII Rule 3 of the CPC but  
the Court was having equal power under Order XVII  
Rule 1 of the CPC. In this view of the matter, the orders  
passed by both the learned courts below are  
unexceptional. Resultantly, this civil revision being  
devoid of any merit is hereby dismissed.

**(Amin-ud-Din Khan)**  
**Judge**

*Qurban\**