

Stereo. H C J D A 38.
JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT.

C.R. No.2570/2011.

Muhammad Bashir Vs. Muhammad Bashir.

Date of Hearing	25.05.2018.
Petitioner by	Sardar Muhammad Ramzan, Advocate.
Respondent by	Faiz Ahmad Kaleem, Advocate.

MUHAMMAD AMEER BHATTI, J:- The suit for possession through pre-emption filed by the petitioner was decreed by the learned trial Court vide judgment dated 11.04.2011 and appeal whereof filed by the respondent/vendee was allowed by the learned first Appellate Court vide impugned judgment dated 23.06.2011, in consequence whereof decree of the learned trial Court was set-aside and suit was dismissed; hence this revision petition.

2. Suit for possession through pre-emption regarding the land measuring 23-Kanals 16-Marlas, purchased by the respondent for a consideration of Rs.9,00,000/- vide mutation No.1140 dated 15.12.2006, instituted by the petitioner claiming his preferential right over the vendee, was contested by the respondent/vendee/defendant by way of filing written statement. Accordingly, issues were framed and parties were allowed to lead their evidence, where-after the learned trial Court vide judgment

dated 11.04.2011 decreed petitioner's suit, however, appeal preferred by the respondent/vendee/defendant was accepted by the learned first appellate Court which set-aside the decree passed by the learned trial Court through judgment dated 23.06.2011 culminating in dismissal of suit.

3. Learned counsel for the petitioner on last date of hearing i.e. 24.05.2018, when confronted about missing of the testimony of the postman which was necessary to prove the factum of *Talb-i-Ishhad* and this deficiency in his evidence alone is sufficient to dismiss the suit in view of law declared by Hon'ble Supreme Court in cases reported as **Muhammad Bashir and others v. Abbas Ali Shah (2007 SCMR 1105) and Allah Ditta through L.Rs and others Vs Muhammad Anar (2013 SCMR 866)**, he obtained a short date to advance his arguments in this regard. Today, he pointed-out that the written statement of the respondent/defendant/vendee qua the query raised i.e. the factum of *Talb-i-Ishhad* was silent as no specific plea regarding denial of issuance or service of notice has been alleged and his evasive denial in respect of whole sentence is no denial in the eye of law. Moreover, the respondent, when appeared in the witness box, in his testimony admitted receiving of notice of *Talb-i-Ishhad*. In such eventuality, it was not mandatory for the petitioner/plaintiff to

produce the postman for recording his testimony with regard to effectiveness of notice of *Talb-i-Ishhad*.

4. I have heard learned counsel for the parties and gone through the record of the case with their able assistance.

5. There is no substance in the arguments raised by the learned counsel for the petitioner as Hon'ble Supreme Court of Pakistan in **Muhammad Bashir and others v. Abbas Ali Shah (2007 SCMR 1105)** and **Allah Ditta through L.Rs and others Vs Muhammad Anar (2013 SCMR 866)** has already held that the pre-emptor must prove the factum of *Talb-i-Ishhad* by producing affirmative evidence which is always recorded before the evidence of a defendant. Even otherwise proving of *Talbs* is mandatory and no question does arise of making a specific plea vis-à-vis its effectiveness by the defendant by producing affirmative evidence.

Besides this, examining of record further reveals that the petitioner/plaintiff took a specific plea in his plaint that the respondent/defendant/vendee had refused to receive notice of *Talb-i-Ishhad*, whereas the sealed envelope dispatched to the respondent/vendee at his address received back unserved had not been produced in the Court rather photocopy of notice of *Talb-i-Ishhad*, envelope alongwith acknowledgement due and receipt of Post Office were alleged to have been attached with the plaint,

whereas neither the original sealed envelope alongwith acknowledgement due were produced in evidence nor the same had been exhibited reflecting from record. Due course in case of return of un-served notice of *Talb-i-Ishhad* is that the sealed envelope alongwith acknowledgement due containing report of refusal or otherwise of Postman received back by the plaintiff must be produced in the Court and the Court in presence of the parties by de-sealing the envelope not only exhibits the original notice of *Talb-i-Ishhad* but also the acknowledgement due and envelope should always be exhibited to confirm that the envelope contains the same notice of *Talb-i-Ishhad* which was sent to the defendant/vendee.

The above noted deficiency in the evidence sufficiently established that the petitioner/plaintiff failed to discharge his mandatory obligation in accordance with law.

6. For what has been discussed above, this petition has no merit and as such it stands **dismissed**. No order as to costs.

(MUHAMMAD AMEER BHATTI)
JUDGE.

Nadeem *