

**JUDGMENT SHEET**

**IN THE LAHORE HIGH COURT, LAHORE.**  
**JUDICIAL DEPARTMENT.**

**C.R. No.791/2010.**

**Muhammad Nawazish Ijaz.**  
**Versus**  
**Imtiaz Khalid etc.**

<b>Date of Hearing</b>	<b>23.02.2017.</b>
<b>Petitioners by</b>	<b>Ch. Muhammad Ashraf Goraya, Advocate.</b>
<b>Respondent by</b>	<b>Mr. Muhammad Akhtar Padda, Advocate (respondent No.2).</b>

**MUHAMMAD AMEER BHATTI, J:-** This revision petition impugns the legality and validity of order/judgment dated 29.09.2009 and 16.12.2009 passed by both the learned Courts below respectively where suit of the petitioner was dismissed on account of non-production of evidence by exercising power provided under Order XVII Rule 3 C.P.C. and appeal whereof also met with same fate, hence this revision petition.

2. Brief facts of the case are that the petitioner filed a suit for possession through specific performance of agreement to sell with regard to land measuring 9-Kanals for a consideration of Rs.1,53,000/- out of which Rs.40,000/- was paid as earnest money. This agreement was reduced into writing on 05.03.2002 and the same was got registered from the Sub Registrar,

Narowal. It was asserted that the respondents refused to fulfil their part of agreement necessitating filing of suit. The suit was resisted by respondents by filing written statement and issues were also framed. On 06.06.2009 evidence of the petitioner was present, however, pendency of another suit for specific performance titled "Muhammad Aslam v. Imtiaz Khalid" was brought to the notice of learned Civil Court by the counsels for the parties. The learned trial Court instead of recording evidence while agreeing with the request of parties consolidated both the suits and consolidated issues were framed on 06.06.2009 and fixed the case for evidence of petitioner/plaintiff for 09.07.2009 but on the said date on account of non-production of evidence, case was adjourned for 15.07.2009 by cautioning the petitioner qua last opportunity for production of evidence. On the said date, again request for an adjournment was made on behalf of plaintiff/petitioner on account of non-availability of evidence and the case was fixed for 09.09.2009 by affording last opportunity. On 09.09.2009, another opportunity was granted with cost of Rs.150/- and the case was adjourned for 29.09.2009, on which date again the evidence of the petitioner was not present, hence his right to lead evidence was closed while exercising power provided under Order XVII Rule 3 C.P.C. and suit was also dismissed vide order of even date. Appeal whereof was also

dismissed by the learned Addl. District Judge vide impugned judgment dated 16.12.2009.

3. Learned counsel for the petitioner contends that adequate opportunities have not been provided to the petitioner to lead evidence and he has wrongly been non-suited. Further contends that consolidated suit filed by respondent No.2 with regard to performance of agreement to sell purportedly executed by respondent No.1 in favour of respondent No.2 is still pending at the stage of evidence and it would be appropriate that this case may also be remanded back to the learned trial Court by granting one last opportunity to the petitioner for production of evidence.

4. On the other hand, learned counsel for respondent No.2 submits that case law on this point has already settled by Hon'ble Supreme Court in a case reported as **Rana Tanveer Khan v. Naseer-ud-Din and others** (2015 SCMR 1401), therefore, this petition is liable to be dismissed as the act of the petitioner was contumacious, hence he is not entitled to get any other opportunity for recording his evidence.

5. I have heard learned counsel for the parties and gone through record of the case.

6. Hon'ble Supreme Court in similar circumstances, as are involved in the case in hand, has held in referred case, in the following terms:-

**"In the present case, as mentioned above, it is clear from the record that the appellant had availed four opportunities to produce his evidence and in two of such orders (*the last in the chain*) he was cautioned that such opportunity granted to him at his request shall be the last one, but still on the day when his evidence was closed in terms of Order XVII, Rule 3, C.P.C. no reasonable ground was propounded for the purposes of failure to adduce the evidence and justification for further opportunity, therefore, notwithstanding that these opportunities granted to the appellant were only in a span of about 1 month and 26 days, yet his case squarely fell within the mischief of the provisions *ibid* and his evidence was rightly closed by the trial Court".**

7. Although the record reveals that on the basis of registered agreement to sell, the petitioner claimed performance of agreement to sell against respondent No.1 and before consolidation of both the suits, the evidence of the petitioner was available as is evident from the order dated 06.06.2009 but on consent of the parties both the suits were consolidated and consolidated issues were also framed thereafter and pendency of rival claimant's suit qua the same property at the stage of evidence created a little bit chance to permit him one last

opportunity with heavy cost for recording his evidence but Hon'ble Supreme Court in case referred supra has already refused to grant any further opportunity to negligent and careless party to get favour for obtaining another opportunity to lead evidence specially where previous orders of trial Court about obtaining of dates to lead evidence were silent propounding any plausible reason have the binding force in view of Article 189 of the Constitution of Islamic Republic of Pakistan, 1973, therefore, I have no option except to follow the law. Resultantly, I declare that the petitioner is not entitled to get any further opportunity to lead evidence and the learned trial Court was justified to invoke the powers under Order XVII Rule 3 C.P.C. and rightly controlled delaying techniques inasmuch as petitioner-plaintiff did not avail/provide opportunities realizing his responsibility and same was confirmed by the learned first Appellate Court, hence this petition has no merit and stands **dismissed**.

**(MUHAMMAD AMEER BHATTI)  
JUDGE.**

*Nadeem\**