

THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Civil Revision Application No.S-182 of 2024

Applicant : Ghulam Hyder through Mr. Sikander Ali
Kolachi, Advocate

Respondent No. 1 : Basram son of Jumoon, not represented
despite notices

Respondents
Nos. 2 and 3 : The Mukhtiarkar (Revenue), Islamkot and
another through Mr. Muhammad Sharif
Solangi, Assistant Advocate General Sindh

Date of Hearing : 25.08.2026

Date of Judgment : 01.09.2026

ORDER

Muhammad Humayon Khan, J.: This Applicant is aggrieved by the Judgment and Decree dated 06.12.2023 passed by the learned District Judge/Model Civil Appellate Court, Tharparkar at Mithi in Civil Appeal No. 24 of 2023 whereby the appeal was dismissed and the Judgment dated 28.08.2023 and Decree dated 29.08.2023 of the learned Senior Civil Judge-I, Mithi in F.C. Suit No. 66 of 2020, were upheld.

2. The Applicant instituted the said suit for declaration, specific performance and mandatory and permanent injunction in respect of an alleged Agreement to Sell dated 07.07.2018 before the learned Senior Civil Judge. After regular procedure, the matter was fixed for the Applicant's evidence as plaintiff. However, by his impugned Judgment and Decree, the learned Senior Civil Judge dismissed the suit under Order XVII Rule 3 of the Code of Civil Procedure, 1908 (hereinafter the "CPC"). These were challenged by the Applicant in Civil Appeal No. 24 of 2023 before the learned District Judge and

which was also dismissed as aforesaid. This revision is therefore against the concurrent findings of both the learned Courts below.

3. Mr. Sikander Ali Kolachi, learned counsel for the Applicant, contended that the Courts below have committed material illegality and irregularity in dismissing the Applicant's suit without affording him a fair and reasonable opportunity to lead evidence. He submitted that on 28.08.2023, although the Applicant could not appear due to unavoidable personal circumstances, his counsel was present and sought an adjournment, yet the learned trial Court proceeded to close the Applicant's evidence and dismiss the suit under Order XVII Rule 3 of the CPC. He further argued that, after closing the Applicant's side, the trial Court ought to have afforded the Respondents an opportunity to lead evidence, particularly when the burden of proving certain issues rested upon Respondent No.1, instead of deciding the entire suit forthwith. According to learned counsel, valuable rights concerning immovable property and specific performance of an agreement to sell were involved and, therefore, the matter ought to have been decided on merits rather than through a technical knockout. He lastly submitted that the learned appellate Court failed to appreciate these material irregularities and mechanically maintained the judgment and decree of the trial Court; therefore, the concurrent findings of the Courts below are liable to be set aside and the matter remanded to the trial Court for decision on merits after providing the parties a proper opportunity to lead evidence. He placed reliance on *Hasham Khan and others v Haroon ur Rashid and others* 2022 SCMR 1793.

4. No one appeared for the Respondent No. 1 despite ample opportunity. However, for the Respondents Nos. 2 and 3, Mr.

Muhammad Sharif Solangi, the learned Assistant Advocate General Sindh vehemently opposed the Application and supported the concurrent findings of the learned Courts below. He argued that sufficient opportunities had already been afforded to the Applicant to lead his evidence, but he failed to avail the same; therefore, the learned trial Court was justified in proceeding under Order XVII Rule 3 of the CPC. He further contended that no illegality, material irregularity or jurisdictional defect has been demonstrated in the impugned judgments warranting interference by this Court in exercise of its revisional jurisdiction under Section 115 of the CPC, and accordingly prayed for dismissal of the revision application.

5. After hearing the learned Counsel present, I had summoned the R&Ps of the suit from the learned Senior Civil Judge and the necessity of my having done so was to examine the diaries and order sheets preceding the exercise of the penal option under Order XVI Rule 3 of the CPC.

6. In my view, the following points fall for the determination of this revision:

Point No. 1 Whether, in the facts and circumstances of the case and having regard to the proceedings reflected in the diaries/order-sheets of F.C. Suit No.66 of 2020, the learned trial Court was justified in closing the Applicant/plaintiff's evidence and dismissing the suit under Order XVII Rule 3 of the CPC on 28.08.2023?

Point No. 2 If so, whether the learned Courts below have committed any material illegality or irregularity warranting interference in revision?

7. I have carefully examined the diaries/order-sheets of F.C. Suit No. 66 of 2020, which reflect the manner in which the proceedings

progressed before the learned trial Court, particularly the opportunities afforded to the Applicant/plaintiff for leading evidence, the adjournments sought from time to time, and the eventual closure of his side followed by dismissal of the suit under Order XVII Rule 3 of the CPC. The relevant proceedings, in chronological order, are reproduced as under:

16-04-2022: Issues were framed. Thereafter, the matter was fixed for plaintiff's evidence.

22-04-2022: Plaintiff's attorney absent; counsel present and moved adjournment application Exh.33, which was allowed. Defendant's attorney absent; counsel and D.D.A. present. Adjourned to 13-05-2022 for plaintiff's evidence.

13-05-2022: Plaintiff's attorney absent; counsel moved adjournment application Exh.34, which was allowed. Defendant's attorney absent; counsel and D.D.A. present. Adjourned to 28-05-2022 for plaintiff's evidence.

28-05-2022: Plaintiff's attorney absent; counsel moved adjournment application Exh.35, which was allowed. Defendant's attorney absent; counsel and D.D.A. present. Adjourned to 16-07-2022 for plaintiff's evidence.

16-07-2022: Plaintiff's attorney absent; counsel moved adjournment application Exh.36, which was allowed. Defendant's attorney absent; counsel and D.D.A. present. Adjourned to 30-07-2022 for plaintiff's evidence.

30-07-2022: Plaintiff's attorney absent; counsel moved adjournment application Exh.37, which was allowed. Defendant's attorney absent; counsel and D.D.A. present. Adjourned to 15-08-2022 for plaintiff's evidence.

15-08-2022: Plaintiff's attorney absent; counsel moved adjournment application Exh.38, which was allowed. Defendant's attorney absent; counsel and D.D.A. present. Adjourned to 30-08-2022 for plaintiff's evidence.

30-08-2022: Plaintiff's attorney absent; counsel moved adjournment application Exh.39, which was allowed. Defendant's attorney absent; counsel and D.D.A. present. Adjourned to 15-09-2022 for plaintiff's evidence.

15-09-2022: Plaintiff's attorney absent; counsel moved adjournment application Exh.40, which was allowed. Defendant's attorney absent; counsel and D.D.A. present. Adjourned to 03-10-2022 for plaintiff's evidence.

03-10-2022: Plaintiff's attorney absent; counsel moved adjournment application Exh.41, which was allowed.

Defendant's attorney absent; counsel and D.D.A. present. Adjourned to 21-10-2022 for plaintiff's evidence.

21-10-2022: The supplied extract does not clearly reproduce the complete proceedings/order for this date.

18-04-2023: Plaintiff's attorney absent; counsel present and sought adjournment, which was allowed. Defendant and his counsel absent; D.D.A. present. Adjourned to 04-05-2023 for plaintiff's evidence.

04-05-2023: Plaintiff's attorney absent; counsel present and moved adjournment application Exh.54, which was allowed. Defendant's attorney absent; counsel and D.D.A. present. Adjourned to 30-05-2023 for plaintiff's evidence.

30-05-2023: Plaintiff's attorney absent; counsel present. Defendant's attorney absent; counsel and D.D.A. present. Presiding Officer was on casual leave. Adjourned to 13-07-2023 for plaintiff's evidence.

15-07-2023: Plaintiff's attorney and counsel absent; an adjournment application Exh.55 was sent through the plaintiff counsel's Munshi, which was allowed. Defendant's attorney absent; counsel and D.D.A. present. Adjourned to 27-07-2023 for plaintiff's evidence.

27-07-2023: Plaintiff's attorney absent; counsel present. Defendant's attorney absent; counsel present. D.D.A. absent. Presiding Officer was under transfer. Adjourned to 17-08-2023 for plaintiff's evidence.

17-08-2023: Plaintiff absent; counsel present. None appeared for defendants. Court specifically recorded that issues had been framed on 16-04-2022 and the matter had remained pending for plaintiff's evidence since then, while the plaintiff and his witnesses had continuously remained absent. Plaintiff's counsel again sought adjournment. Application was allowed as a "last chance". Matter adjourned to 28-08-2023 for plaintiff's evidence.

28-08-2023: Plaintiff's attorney and witness remained absent; plaintiff's counsel was present. Defendant's attorney absent; counsel present; D.D.A. present. Judgment was announced at Exh.57 and the plaintiff's suit was dismissed under Order XVII Rule 3 CPC.

8. In essence, after framing of issues on 16-04-2022, the plaintiff was afforded repeated opportunities extending for about 16 months to produce evidence. At least Exh-33, 34, 35, 36, 37, 38, 39, 40, 41, 54 and 55 relate to repeated adjournments sought from the plaintiff's side. On 17-08-2023, an express last opportunity was granted, but on 28-08-2023 the plaintiff and his witness again failed to appear, resulting in dismissal under Order XVII Rule 3 CPC.

9. One further aspect of the case merits consideration. Respondent No. 1 in his written statement dated 19.11.2020, available at Exh-17, page 149 of the trial Court record, categorically denied the Applicant's claim and specifically disputed the alleged Sale Agreement No. 103 dated 07.07.2018, pleading that it was a "false, bogus and fraudulent document" and that the LTI purportedly affixed thereon was not his and could be verified through a handwriting/fingerprint expert, while expressly asserting that the burden to prove the document rested upon the plaintiff. Thus, from the very inception of the proceedings, the Applicant was fully aware that the very foundation of his claim was under specific and unequivocal denial and consequently required proof through cogent and admissible evidence. Despite such clear contest, the Applicant repeatedly failed to proceed with and conclude his evidence, notwithstanding numerous opportunities afforded by the trial Court. Such conduct, viewed in the backdrop of the repeated adjournments reflected in the case diaries, demonstrates that instead of diligently prosecuting his claim and discharging the burden resting upon him, the Applicant allowed the proceedings to linger for an inordinate period, thereby consuming valuable judicial time and unnecessarily prolonging the litigation for the parties and their counsel. The Applicant, therefore, cannot derive any advantage from a situation brought about by his own persistent failure to lead evidence in support of a claim which stood specifically controverted from the outset.

10. The legal position governing Order XVII Rule 3 of the CPC is by now well settled. Although the provision is penal in character and must therefore be applied with circumspection, once its essential conditions are fulfilled the Court is not required to indulge a litigant

who, despite time granted at his own request and a clear warning, fails to perform the very act for which such time was allowed. In *Syed Tahir Hussain Mehmoodi and others v Agha Syed Liaqat Ali and others* 2014 SCMR 637, the Supreme Court held that where the case of a delinquent litigant squarely falls within Order XVII Rule 3, neither concession nor a lenient view is warranted merely on the premise that matters should ordinarily be decided on merits. The same principle was reiterated in *Rana Tanveer Khan v. Naseer-ud-Din and others* 2015 SCMR 1401, where repeated opportunities followed by a last opportunity, yet continued failure to adduce evidence, were held sufficient to attract the Rule.

11. In *Duniya Gul and another v Niaz Muhammad and others* PLD 2024 SC 672, the Supreme Court emphasized that Courts must remain vigilant against repeated adjournments and may close the right of a party which, despite opportunities, fails to produce evidence. Likewise, in *Lutfullah Virk v Muhammad Aslam Sheikh* PLD 2024 SC 887, the Supreme Court deprecated the prevailing adjournment culture and reiterated that an adjournment is not a matter of right; where sufficient cause is not shown and the party defaults in performing an act necessary for progress of the suit, Order XVII Rule 3 provides the procedural consequence. Most recently, in *Muhammad Asim v Dr. Abdul Hamid Jan and others* 2025 SCMR 624, the Supreme Court again held that a litigant cannot be permitted to conduct litigation according to his own whims and wishes and upheld closure of evidence where adequate opportunities had not been availed. In *Rai Muhammad Riaz (decd) through LRs and others v Ejaz Ahmed and others* PLD 2021 SC 761, the Supreme Court has deprecated the practice of affording multiple last and final chances while holding that the judgments of the Supreme Court are

binding upon trial courts and failing to follow them may result in penal consequences for judicial officers. In *Moon Enterprises CNG Station, Rawalpindi v Sui Northern Gas Pipelines Limited through General Manager and another* 2020 SCMR 300 it was observed with regard to Order XVII Rule 3 of the CPC that an order giving a last opportunity to a party is in fact a promise by the Court to the other party and such a promise must be honoured. As such, there is no room for further opportunities once a last and final chance has been extended.

12. Learned counsel for the Applicant has relied upon *Hasham Khan and others v Haroon-ur-Rashid and others* 2022 SCMR 1793. The proposition laid down therein is unexceptionable, but the judgment does not advance the Applicant's case on the present facts. In *Hasham Khan*, evidence of the Patwari Halqa and ADK had already been recorded and the trial Court, after closing the remaining evidence, straightaway dismissed the suit without examining the evidence already available on the record. The Supreme Court consequently held that the expression "decide the suit forthwith" does not mean an automatic or instantaneous dismissal and that the available material must be considered. The distinguishing feature here is that, despite the matter remaining fixed for the Applicant's evidence for approximately sixteen months and despite numerous adjournments at his instance, the Applicant did not bring his foundational case into evidence at all. There was, therefore, no previously recorded affirmative evidence of the Applicant which the trial Court ignored. *Hasham Khan* protects a litigant against mechanical disposal without appraisal of existing evidence, but it does not confer an indefinite right to produce evidence after repeated defaults and an exhausted last opportunity.

13. The Applicant's further contention that, after closure of his evidence, the trial Court was bound to call upon the defendants to lead evidence is also misconceived in the peculiar circumstances of this case. The suit was one for declaration and specific performance founded upon Sale Agreement No. 103 dated 07.07.2018. Respondent No.1 had categorically denied its execution, the alleged LTI and the transaction itself. The initial and substantive burden, therefore, rested upon the plaintiff to prove the agreement, its execution, the alleged payment, his readiness and willingness, and the facts entitling him to the equitable relief claimed. A defendant's burden upon a particular issue does not relieve a plaintiff of the primary obligation to establish the facts constituting his own cause of action. Consequently, the failure of the Applicant to prove his affirmative case will not be cured in any manner by shouldering responsibility upon the defendants.

14. It is equally significant that the order dated 17.08.2023 was not a routine adjournment. The learned trial Court expressly recorded the long pendency of the matter for plaintiff's evidence, noted the continuous absence of the plaintiff and his witnesses, and nevertheless allowed the request for adjournment as a "last chance". The Applicant was thus put on unmistakable notice of the consequence of further default. On 28.08.2023, neither the plaintiff's attorney nor his witness appeared. No circumstance is shown from the record which could attribute that default to the Court, the opposite party, failure of process, or any circumstance beyond the Applicant's control. The sequence satisfies the essential safeguards identified in the authorities governing Order XVII Rule 3 of the CPC.

15. For the foregoing reasons, I hold as follows:

- i) In the peculiar facts and prolonged procedural history of F.C. Suit No. 66 of 2020, the learned trial Court was justified in closing the Applicant's evidence and proceeding under Order XVII Rule 3 of the CPC. **Point No. 1** is answered in the affirmative.
- ii) The concurrent findings of the learned Courts below do not disclose any illegality, material irregularity or jurisdictional error warranting interference under Section 115 of the CPC. Thus, **Point No. 2** is answered in the negative and both the impugned Judgments and Decrees are maintained.

16. For these reasons, this revision application being devoid of merit is dismissed with any listed applications and the impugned Judgments and Decrees are maintained. The parties shall bear their own costs.

JUDGE

APPROVED FOR REPORTING

Faisal