

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Rev. No. S-24 of 2023

Khemraj and Four (4) others

Vs.

Ghulam Farid Solangi

Applicant No.1	:	Khemraj, Sub Zonal Manager of Sui Southern Gas Company Limited, Larkana
Applicant No.2.		Zonal Manger of Sui Southern Gas Company Limited, Larkana
Applicant No.3.		Regional Manager of Sui Southern Gas Company Limited, Larkana Region Larkana
Applicant No.4		The Managing Director of Sui Southern Gas Company Limited, Gulshan-e-Iqbal Karachi
Applicant No.5		The Federation of Pakistan, through its Secretary Petroleum and Gas Islamabad through Mr. Imdad Ali Mashori, Advocate
Respondent		Ghulam Fareed s/o Abdul Hamid Solangi through Syed Fida Hussain Shah, Advocate

Date of Hearing : 18-03-2024

Date of Judgment : 17-11-2025

JUDGMENT

JAWAD AKBAR SARWANA, J.: This Revision arises out of a fatal accident F.C. Suit No.91/2018 which arose in relation to a blast which occurred in the residence of one Ghulam Farid and resulted in the death of

Ghulam Farid's daughter-in-law Mst. Afshaan and his granddaughter, Mst. Fatima. The suit had been proceeding for the recording of the examination-in-chief of Ghulam Farid when it was adjourned to 19.6.2021 for the recording of his further evidence. However, it appears from the documents available on record that, on at least the last five dates of hearings before the trial Court, although the plaintiff's witness was present, his Counsel remained absent. It also appears that on each of the five dates of hearings, the Counsel filed an Application seeking adjournments. Ultimately, the trial court proceeded to dismiss the suit under Order 17 Rule 3 CPC vide Judgment dated 09.06.2022. Ghulam Farid filed an appeal against the judgment passed by the trial Court, which was allowed vide Judgment dated 30.01.2023. Aggrieved by the Judgment of the Appellate Court, SSGC and others have preferred this Revision.

2. Counsel for the Applicant submits that the trial Court has rightly dismissed the Suit under Order 17 Rule 3 CPC; whereas, the Respondent Counsel submits that while the witness was present on the dates of hearings when his examination-in-Chief was to be recorded in Court but his Counsel was called absent, hence the suit ought not to have been dismissed by the trial Court under Order 17 Rule 3 CPC.

3. Heard Counsel. The data of the hearing dates available in the revision is reproduced in tabular format below, attached as Schedule I, which forms part of my Judgment. It is apparent from perusal of the data sheet that on the last five occasions when the matter was listed in Court, on each occasion the Plaintiff's witness was present in Court; whereas the Defendant's Advocate was not in attendance on three occasions. Therefore, even when the Plaintiff's witness was available in Court on five occasions, the opposing Counsel was available only twice. In these circumstances, the plaintiff also made an application for the condonation of the absence of the plaintiff's counsel. The trial Court, while noting the absence of the Plaintiff's Counsel - with the Plaintiff's witness being present in Court - ought to have weighed the facts and data available, indicating that the Defendant's own Counsel was called absent three times out of five. Indeed, the trial Court ought to have taken a holistic approach, balancing the procedural options available to it in light of the trite principle

of law that matters should be decided on merit rather than technicalities, and dealt with the matter differently. Given the above, it appears harsh on the part of the trial Court to dismiss the suit under Order 17 Rule 3 CPC, and I am inclined to agree with the reasons articulated in the impugned Judgment dated 30.01.2023, setting aside the trial Court's judgment and decree passed under Order 17 Rule 3 CPC.

4. In light of the above, and the reasons articulated in the impugned Judgment dated 30.01.2023 passed by the Addl. District Judge Ratodero, and additionally for the reasons discussed by me herein above, the impugned Judgment is well-reasoned and does not suffer from legal infirmity. The challenge raised by SSGC and others stands dismissed. The judgment and decree dated 09.06.2022, passed in FC Suit No.91/2018, was set aside by the impugned Judgment dated 30.01.2023 with directions to the respondent-plaintiff to appear before the trial Court. The directions stand revived. The trial Court is directed to issue notice to the parties and commence trial on 01.12.2025 without delay, and after recording of evidence, and hearing the parties, pass judgment and decree afresh within a period of six (6) months from 01.12.2025.

5. The civil revision stands dismissed in the above terms.

J U D G E