

ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Civil Revision No. S-63 of 2026
[Muhammad Ali v. Mst. Uroosa Fayaz]

Counsel of Applicant : Mr. Arsalan Arain, Advocate

Date of Hearing/Judgment : 14.09.2026

ORDER

Muhammad Humayon Khan, J.: Through the instant Civil Revision Application under Section 115, C.P.C., the applicant, Muhammad Ali, has called in question the judgment dated 05.03.2026 and decree dated 12.03.2026 passed by the learned II-Additional District Judge, Tando Adam, in Civil Appeal No.243 of 2024 (Muhammad Ali v. Mst. Uroosa Fayaz), whereby his appeal was dismissed and the order dated 19.11.2024 passed by the learned Senior Civil Judge, Shahdadpur, in F.C. Suit No.151 of 2023 was maintained, through which the suit instituted by the applicant for recovery of articles or, in the alternative, their value amounting to Rs.15,00,000/- was dismissed under Order XVII Rule 3, C.P.C. The applicant, being aggrieved by the concurrent orders of the Courts below, has invoked the revisional jurisdiction of this Court, seeking setting aside thereof and remand of the suit to the learned trial Court for its decision on merits after affording the parties an opportunity to lead evidence.

2. Briefly stated, the applicant instituted F.C. Suit No.151 of 2023 against the respondent for recovery of certain articles or, in the alternative, their value amounting to Rs.15,00,000/-. His case, as set up in the plaint, was that the parties contracted marriage on 22.11.2019 at Shahdadpur, with Haq Mehr fixed at Rs.25,000/-, which according to him was paid. It was alleged that on 10.02.2020, at about 04:00 p.m., the respondent left the matrimonial house in his absence and took with her 14 tolas of gold, one Rado watch and cash amounting to Rs.30,000/-, collectively valued by him at Rs.15,00,000/-. The applicant thereafter instituted proceedings for restitution of conjugal rights before the Family Court at

Shahdadpur, which were decreed ex parte on 06.07.2021. According to the applicant, despite his demand, the respondent did not return the aforesaid articles, whereas the respondent subsequently instituted proceedings for dissolution of marriage and return of dowry articles before the XVIth Family Judge, Karachi.

3. The applicant initially presented his suit for recovery of the aforesaid articles/amount, which was dismissed in limine by the learned trial Court vide order dated 04.10.2021 on the ground that the suit was not maintainable and the plaint did not disclose a cause of action. The applicant assailed that order through Civil Appeal No.119 of 2021, which was ultimately allowed by the learned Additional District Judge, Shahdadpur, vide judgment dated 13.07.2023. The order dated 04.10.2021 was set aside and the matter was remanded to the learned trial Court with directions to admit the suit, invite the parties to lead evidence and decide the controversy on merits.

4. Consequent upon the aforesaid remand, the suit was admitted and registered as F.C. Suit No.151 of 2023. Summons were issued to the respondent, who entered appearance and filed her written statement, controverting the assertions made in the plaint and seeking dismissal of the suit. Upon completion of the pleadings, the learned trial Court, on 23.05.2024, framed issues concerning, inter alia, the applicant's claim that the respondent had taken away the disputed articles and cash; the respondent's plea that she had been ousted from the matrimonial house in three clothes after maltreatment and that the list relied upon by the applicant was false and managed; the applicant's entitlement to the relief claimed; and the maintainability of the suit.

5. The matter thereafter proceeded before the learned trial Court. On 11.11.2024, the Presiding Officer was stated to be on leave and the matter was adjourned to 19.11.2024. On the latter date, neither the applicant nor his witnesses were in attendance. His learned counsel moved an application seeking adjournment on the ground that the applicant, due to unavoidable circumstances, could not attend the Court or contact his counsel. The learned trial Court declined the request and,

vide order dated 19.11.2024, dismissed the suit under Order XVII Rule 3, C.P.C., with no order as to costs.

6. Aggrieved by the order dated 19.11.2024, the applicant preferred Civil Appeal No.243 of 2024. The appeal was eventually heard by the learned II-Additional District Judge, Tando Adam, who, vide judgment dated 05.03.2026 followed by decree dated 12.03.2026, dismissed the appeal and maintained the dismissal of the applicant's suit. It is against the aforesaid judgment and decree of the learned appellate Court, as well as the order dated 19.11.2024 of the learned trial Court, that the applicant has approached this Court through the present Civil Revision Application under Section 115, C.P.C.

7. Mr. Arsalan Arain, learned counsel for the applicant, contended that the Courts below acted with material illegality and irregularity in dismissing the suit without recording evidence, particularly when, vide judgment dated 13.07.2023 in Civil Appeal No.119 of 2021, the matter had earlier been remanded with specific directions to afford the parties an opportunity to lead evidence and decide the suit on merits. He argued that Order XVII Rule 3, C.P.C. contemplated adjudication on the material available on record and could not justify dismissal on merits when no evidence had been recorded; indeed, the learned appellate Court itself observed that dismissal for want of prosecution was governed by Order IX Rule 8, C.P.C. He further submitted that the absence of the applicant and his witnesses on 19.11.2024 was sufficiently explained, whereas the disputed questions concerning ownership and alleged removal of 14 tolas of gold, one Rado watch and cash of Rs.30,000/- necessarily required evidence. According to him, the learned appellate Court also erred in relying upon matters relating to the applicant's conduct, delay in lodging the FIR and family litigation without permitting the parties to prove such matters at trial. He, therefore, prayed that the impugned judgment and decree, as well as the order dated 19.11.2024, be set aside and the suit be remanded to the learned trial Court for decision on merits after affording the parties an opportunity to lead evidence.

8. I have gone through the R&Ps of the learned trial Court and carefully examined the case diaries, particularly from the stage of framing of issues until dismissal of the suit. The record reflects the following sequence of proceedings:—

- **23.05.2024:** Issues were framed on a separate sheet and the matter was fixed for the plaintiff's evidence, with directions regarding filing of the list of witnesses and documents.
- **30.05.2024:** The plaintiff was absent, though his counsel was present. The defendant was also absent, while her counsel was present. The defendant filed her list of witnesses and documents, and the matter was adjourned to **09.07.2024** for plaintiff's evidence.
- **09.07.2024:** Both parties were absent, while their respective counsel were present. The matter was adjourned to **15.07.2024** for plaintiff's evidence.
- **15.07.2024:** The plaintiff along with his counsel was present. Applications under Order XIII Rules 1 & 2 and Order XVI Rules 1 & 2, C.P.C. were filed on behalf of the plaintiff; notices thereof were ordered to the other side and the matter was adjourned to **29.07.2024** for plaintiff's evidence and objections on the said applications.
- **29.07.2024:** The plaintiff along with his counsel was present; the defendant was absent, though her counsel was present and received copies of the aforesaid applications. The matter was adjourned to **05.08.2024** for plaintiff's evidence and objections on the applications.
- **05.08.2024:** The plaintiff was present, while his learned counsel was absent and his junior partner appeared. The defendant was absent, though her counsel was present and raised no objection to the plaintiff's applications under Order XIII Rules 1 & 2 and Order XVI Rules 1 & 2, C.P.C.; consequently, both applications were allowed and the matter was adjourned to **19.08.2024** for plaintiff's evidence.
- **19.08.2024:** The plaintiff along with his counsel was present. An adjournment application was moved on his behalf and the matter was adjourned to **02.09.2024** for plaintiff's evidence.

- **02.09.2024:** The plaintiff along with his counsel was present; however, the Presiding Officer was on earned leave. The matter was, therefore, adjourned to **13.09.2024** for plaintiff's evidence.
- **13.09.2024:** The plaintiff and his counsel were absent, though the junior partner of his counsel was present and sought an adjournment. The request was allowed as a **last and final chance**, and the matter was adjourned to **24.09.2024** for plaintiff's evidence.
- **24.09.2024:** The plaintiff was present, while his counsel was absent and his junior partner appeared and sought an adjournment. The request was again allowed as a **last and final chance**, and the matter was adjourned to **01.10.2024** for plaintiff's evidence.
- **01.10.2024:** The plaintiff was present, his counsel was absent and the junior partner appeared and sought another adjournment. The request was allowed as a **last and final chance**, and the matter was adjourned to **10.10.2024** for plaintiff's evidence.
- **10.10.2024:** The plaintiff along with his counsel was present; however, an adjournment was again sought on his behalf, which was allowed **in the interest of justice**, and the matter was adjourned to **29.10.2024** for plaintiff's evidence.
- **29.10.2024:** The plaintiff and his counsel were absent, though the junior partner of his counsel appeared and sought an adjournment. The request was allowed as a **last and final chance**, and the matter was adjourned to **11.11.2024** for plaintiff's evidence.
- **11.11.2024:** The plaintiff and his counsel were absent, though the junior partner of his counsel was present. Since the **Presiding Officer was on casual leave**, no evidence could be recorded and the matter was adjourned by the Court to **19.11.2024** for plaintiff's evidence.
- **19.11.2024:** The plaintiff was absent, while his learned counsel was present. The defendant was also absent, though her counsel was present. Learned counsel for the plaintiff moved an application for adjournment stating that the plaintiff was not in contact with him. After hearing the matter, the learned trial Court declined further adjournment and, by judgment announced on the same day, **dismissed the suit under Order XVII Rule 3, C.P.C.**, directing preparation of the decree accordingly.

Thus, the diaries show that although several opportunities, including repeated last and final chances, had been afforded to the plaintiff for producing his evidence, no evidence of the plaintiff had actually been recorded by the time the suit came to be dismissed on 19.11.2024. They further show that the immediately preceding date, i.e. 11.11.2024, did not result in an adjournment at the instance of the plaintiff, as the Presiding Officer himself was on casual leave, whereupon the case was adjourned by the Court to 19.11.2024.

9. The above chronology leaves little room for doubt that the applicant was afforded more than sufficient opportunity to lead his evidence. After framing of issues on 23.05.2024, the suit remained fixed for the plaintiff's evidence for several months. On 19.08.2024 an adjournment was sought from his side; thereafter, on 13.09.2024, 24.09.2024, 01.10.2024 and again on 29.10.2024, adjournments were allowed despite the Court recording the indulgence as a "last and final chance". On 10.10.2024 yet another adjournment was granted in the interest of justice. It is true that on 11.11.2024 the matter could not proceed because the Presiding Officer was on casual leave, but that circumstance does not efface the earlier defaults or revive an unlimited right to further adjournments. When the case was again taken up on 19.11.2024, the applicant was absent and his own counsel candidly stated that the applicant was not in contact with him. In such circumstances, the learned trial Court cannot be said to have acted precipitately in declining further indulgence.

10. The contention founded upon the earlier remand order dated 13.07.2023 also does not advance the applicant's case. The direction contained therein was that the suit be admitted, the parties be invited to lead evidence and the matter be decided on merits. The learned trial Court complied with that direction: the suit was entertained, the respondent was summoned, written statement was filed, issues were framed, the applicant's applications under Orders XIII and XVI, C.P.C. were allowed, and repeated opportunities were afforded to him to produce his evidence. A direction to decide a matter on merits does not confer upon a litigant

an indefinite license to withhold evidence or compel the Court to grant adjournments ad infinitum. The applicant cannot frustrate the very process of trial and thereafter seek another remand on the ground that the case was not decided after recording evidence which he himself repeatedly failed to produce.

11. The legal position governing Order XVII Rule 3, C.P.C. has recently been examined by this Court in *Civil Revision No.S-182 of 2024 Ghulam Hyder v. Basram & others*. The detailed reasoning recorded therein need not be repeated and, to the extent applicable, is adopted for the present case. Suffice it to observe that in *Syed Tahir Hussain Mehmoodi and others v Agha Syed Liaqat Ali and others 2014 SCMR 637* and *Rana Tanveer Khan v Nasee -ud-Din and others 2015 SCMR 1401*, the Honourable Supreme Court recognised that where repeated opportunities, followed by a clear last opportunity, are not availed for production of evidence, the consequence contemplated by Order XVII Rule 3 may legitimately follow. The same approach is reflected in *Perviz Shah Gillani and another v Miss Zeeba Hakim and 3 others 2017 YLR 1151*, read with *Industrial Sales and Service, Karachi and another v Archifar Opal Laboratories Ltd., Karachi PLD 1969 Karachi 418*. More recently, *Duniya Gul and another v Niaz Muhammad and others PLD 2024 SC 672*), *Lutfullah Virk v Muhammad Aslam Sheikh PLD 2024 SC 887* and *Muhammad Asim v Dr. Abdul Hamid Jan and others 2025 SCMR 624* have reiterated that adjournment is not a matter of right and that civil proceedings cannot be permitted to remain hostage to persistent default in producing evidence.

12. *Hasham Khan and others v Haroon-ur-Rashid and others 2022 SCMR 1793*, upon which the plea for remand is substantially founded, is distinguishable. In that case material evidence had already been recorded and the grievance was that the suit was disposed of without appraisal of the evidence available on record. Here, despite repeated opportunities and several last and final chances, the applicant did not bring his foundational case into evidence at all. The principle that a Court must consider material already on record cannot be converted into an indefinite right to adduce evidence after repeated defaults. Likewise, the

observation of the learned appellate Court that dismissal for want of prosecution ordinarily attracts Order IX Rule 8, C.P.C. does not alter the substance of the present proceedings, which had repeatedly been adjourned specifically for the plaintiff's evidence and culminated in default after time had been granted for that very purpose. Mere infelicity of expression, if any, does not constitute a jurisdictional defect where the ultimate course adopted is otherwise supported by the record and law.

13. Revisional jurisdiction under Section 115, C.P.C. is supervisory in character and is attracted only where the subordinate Court has exercised jurisdiction not vested in it, failed to exercise jurisdiction so vested, or acted illegally or with material irregularity in the exercise thereof. The case diaries themselves demonstrate repeated indulgence, repeated defaults and eventual non-production of evidence by the applicant. No jurisdictional defect, material illegality or irregularity has therefore been shown in the concurrent orders warranting interference by this Court. Consequently, the instant Civil Revision Application, being devoid of merit, is dismissed in limine along with all pending application(s), with no order as to costs.

JUDGE

FAISAL