

Court to decide the Suit afresh in accordance with law. The relevant finding of the Appellate Court reads as under:-

12. It may not be forgotten that the trial Court had dismissed the suit of the appellant/plaintiff under Order 17 Rule 3 of Civil Procedure Code only on the ground that he did not lead his evidence as stated hereinabove. While I have carefully gone through the impugned judgment and found that the trial Court had specifically mentioned therein that the appellant/plaintiff had not only filed his affidavit-in-evidence but also got recorded his examination-in-chief. Thus, it becomes clear that the appellant/plaintiff led his evidence but the matter was at the stage of cross-examination that was to be conducted by the counsel for the defendant. Anyhow it is well settled principles of law that if a party fails in leading his evidence after providing him enough fair opportunities then under such circumstances side of the defaulter party must be closed and he should be debarred from leading his evidence. Then other party should be given fair opportunity to lead his evidence before taking final decision. In this case when the appellant/plaintiff was said to have been remained absent from cross-examination then at the most his side could have been closed and then fair opportunity was to be given to respondent No. 1/defendant for leading his evidence but the trial Court did not do so and dismissed the suit of the appellant by relying upon only the written statements of defendant. It is also well settled principles of law that the pleadings of the parties cannot be the substitute of oral as well as documentary evidence then how the trial Court dismissed the suit of the appellant/plaintiff by relying upon the written statements of the respondent No.1. It is also well settled principles of law that each and every lis needs to be decided in accordance with law purely on merits and every litigant must be given full, fair and adequate opportunity to lead his evidence.”

I have gone through the above finding and confronted the Applicant's Counsel as apparently the learned Trial Court was misdirected in passing the impugned order and the Counsel has not been able to satisfactorily respond. From the record, it is clear that at best the side of Respondent could have been closed with further directions to the Applicant to lead its evidence, if any. Though per settled law, a suit can be dismissed under Order 17 Rule 3 CPC, for want of evidence. However, the use of the words "proceed to decide the suit forthwith" in Order 17 Rule 3 CPC does not by itself mandatorily means to "dismiss the suit forthwith". The Court can still proceed with the suit notwithstanding that a party has failed to lead evidence, meaning thereby that in case of default to do a

specific act by any party to the suit, next step required to be taken in the suit should be taken¹. From the record it is an admitted position that Respondent had filed its affidavit in evidence and examination-in-chief had been recorded, resultantly, the documents relied upon must have been exhibited as well. It further appears that the learned trial Court has dilated upon the merits of the case and has rendered a judgment issue wise, and while concluding the same it has dismissed the Suit under Order 17 Rule 3 CPC. This procedure adopted by the trial Court does not seem to be in consonance with law, and therefore, no exception can be drawn to the judgment of the Appellate Court. Lastly, the matter has otherwise been remanded to the trial Court for decision on merits; therefore, no case for indulgence is made out to exercise any revisional jurisdiction under Section 115 CPC. Accordingly, this Revision Application is dismissed in *limine* with pending applications.

J U D G E

Ayaz

¹ Muhammad Aslam v Nazir Ahmed (2008 SCMR 942)