

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Shafi Siddiqui
& Jawad Akbar Sarwana JJ

Arshad Ali v. Furqan Uddin Usmani and Two Others

Constitution Petition No.D-5061 of 2023

Petitioner: Arshad Ali, through S. Muddasir Hussain Zaidi, Advocate

Respondents: Nemo

Date of hearing: 20.10.2023

Date of decision: 20.10.2023

J U D G M E N T

Jawad A. Sarwana, J: On 07.09.2021, at the stage of recording of evidence of the Defendant, Petitioner/Defendant in Civil Suit No.189/2018 filed an Application under Order 16 Rule 1 read with Section 151 CPC seeking orders from the Court to call as Court Witnesses, either the Director (Land) Katch Abadies, KMC or the Deputy Director (Land) Katchi Abadies, KMC to submit a Report which they had filed in Suit No.1421/2017 (available on page 225 of the Petition). Meanwhile, the Petitioner/Defendant's evidence was recorded on 11.12.2021. On 11.01.2022, the trial court dismissed the above-mentioned application ("First Application"). In the same month, the Petitioner/Defendant filed a Civil Revision Application No.07/2022 before the Court of VIth Additional District and Sessions Judge, Karachi Central. Thereafter, on 22.02.2022, Petitioner/Defendant filed Affidavits in Evidence of two (2) witnesses, namely, Syed Kashif Ali and Jaffer Saleem (available on pages 243 to 261 of the Petition) and in May 2022 filed another Application under Order 16 CPC read with Section 151 CPC (available on page 29 of the Petition) pleading that under Order 16 Rules 11 and 17 CPC he may be allowed to record evidence of the two above-named marginal witnesses of the alleged Sale Agreement as Defendant witnesses whose names were not mentioned in the list of witnesses ("Second Application"). The trial court dismissed the Second Application by Order dated 28.05.2022. The Petitioner/Defendant then filed a Civil Revision Application No.66/2022 before the Court of VIth Additional District and Sessions Judge, Karachi Central, who dismissed the said two Revisions against the First Application and the Second Application by two separate Orders dated 08.09.2023. The Petitioner/Defendant

has now invoked writ jurisdiction, impugned the District Court's Order dated 08.09.2023 in Civil Revision No.66/2022, and seeks orders to call the Director (Land) Kachi Abadi, KMC or the Deputy Director (Land) Katchi Abadies, KMC, as Court Witnesses.

2. The Counsel for Petitioner/Defendant pleads that it is his right to depose evidence through the witnesses mentioned in the Petition. He contends that the impugned Order dated 08.09.2023 is against Article 10-A of the Constitution of the Islamic Republic of Pakistan and prays that his Petition be granted.

3. We have heard the arguments of the Petitioner/Defendant Counsel and perused the documents available with the Petition.

4. We have carefully perused the trial court's Order dated 28.05.2022 and the District Court's impugned Order dated 08.09.2023. Both Orders note that neither Petitioner/Defendant filed any list of witnesses in the suit nor made out any good cause for the Court to call fresh witnesses. The trial court rightly identified that the Petitioner/Defendant failed to file a list of witnesses at several trial stages, including when filing the Written Statement and at the time of Settlement of Issues. Further, the District Court also observed that the Petitioner/Defendant's attempt to introduce evidence at this late stage appeared to be an attempt to fill in the lacunas left by him during his evidence. Finally, the District Court held that the Petitioner/Defendant failed to point out any illegality, irregularity, infirmity or perversity in the trial court's order dated 28.05.2022. Last but not least, the Petitioner, neither before the District Court nor before us, now, has established any "reasonable", "sufficient", or "good cause" for non-submitting the list of witnesses. Accordingly, we do not find that the impugned Order dated 08.09.2023 requires any disturbance or interference, and the same merits to be upheld.

5. In addition to the above reasons for the dismissal of this Petition, this Petition is also liable to be dismissed in light of the observations of the Supreme Court of Pakistan in Muhammad Zahoor and Another v. Lal Muhammad and Two Others, 1988 SCMR 322. As held in the Muhammad Zahoor case (supra), the exercise of writ jurisdiction against revisional order has to be exercised in rare and exceptional circumstances only when it could be said that the order passed by the revisional Court has been passed without lawful authority, beyond jurisdiction and vested rights were curtailed. In the present case, a Constitution petition has been filed against an order passed in revision by the Additional District Judge. Although in certain situations, a writ petition is competent against

a revisional order, yet the impugned Order emanating from civil procedure regarding matters concerning the non-calling of the Court witnesses is of a discretionary nature, passed to advance the cause of administration of justice, part of trial proceedings, and cannot be said to have been passed without lawful authority or beyond the jurisdiction or curtailing the vested rights of the Petitioner/Defendant. No arbitrariness or perversity in passing the impugned Order has been alleged or proved by the Petitioner/Defendant. Further, fragmentary decisions of an interim nature cannot be challenged in writ jurisdiction as held in a judgment reported as Ibrahim v. Muhammad Hussain, PLD 1975 SC 457. Order 16 Rules (1) (1) and (1) (2) state as follows:

Order XVI, Rule 1(1). Summons to attend to give evidence or produce documents. (1) Not later than seven days after the settlement of issues, the parties shall present in Court a 2 [certificate of readiness to produce evidence, along with a] list of witnesses whom they propose to call or produce either to give evidence or to produce documents.

(2) A party shall not be permitted to call or produce witnesses other than those contained in the said list, except with the permission of the Court and after showing good cause for the omission the said witnesses from the list; and the Court grants such permission, it shall record reasons for so doing.

6. Rule 1 of Order 16 CPC provides a method for summoning witnesses to give evidence or produce documents in cases pending adjudication in a Court of law. Parties must submit a list of witnesses not later than seven days from the date of settlement of issues. When a witness is not named in the list of witnesses as required under Order 16 Rule 1 CPC, Rule 2 of the said Order enables a party to call a witness subject to permission of the Court and after showing good cause for such omission. In the present case, the District Court neither exceeded its jurisdiction when hearing the Petitioner/Defendant's Application nor the impugned Order passed was irregular. Allowing the challenging of the impugned Order through a writ could delay the case's decision and prolong the agony of the parties. Consequently, there is no need for interference in the impugned Order.

7. Another aspect of the matter needs to be addressed. The Petitioner/Defendant has not challenged the trial court's order dated 11.01.2022 in CP No.D-5061/2023. The said order dated 11.01.2022 dismissed his First Application wherein he sought exactly the same relief he seeks from this Court today in CP No.D-5061/2023, i.e. directions for calling Government Officials as Court witnesses. He has prayed for this relief in another Petition, CP No.D-5162/2023. In this Petition, CP No.D-5061/2023, he has impugned the Order, which emerged from the Second Application filed before the trial court, which was

to call marginal witnesses of the Sale Agreement as Defendant witnesses (arising from his Second Application). The District Court dismissed the Revision arising from this Second Application. The Order impugned before us arising out of Revision No.66/2022 (available on pages 33-43 of this Petition) discusses the calling of marginal witnesses of the Sale Agreement as Defendant witnesses. This was the subject matter in Revision No.66/2022 before the District Court from which this Petition arises. Yet, this Petition, namely CP No.D-5061/2023, concerns the calling of Government officials as Court witnesses (the First Application). The trial Court's Order dated 28.05.2022 does not relate to calling Government Officials as Court Witnesses. The Petitioner/Defendant cannot now seek relief in writ jurisdiction in this CP No.D-5061/2023, which is limited to Civil Revision No.66/2022. The Court cannot consider the trial court's Order dated 11.01.2022 in a Petition, which challenges the trial court's order dated 28.05.2022. Suffice it to say, although the Petitioner/Defendant has filed CP No.D-5062/2023, which concerns the trial court's Order of 11.01.2022, even if we were to consider both Petitions, CP No.D-5061/2023 and CP No.D-5062/2023, collectively, we would still be reluctant to grant relief to the Petitioner for the reasons already discussed herein. It may be noted that we have taken up and decided each Petition separately.

7. In view of the above, the impugned Order is just and lawful. It does not suffer from any illegality or material irregularity which calls for any interference by this Court exercising Writ Jurisdiction. Accordingly, the Petition is dismissed in limine along with all listed applications.

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