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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Civil Revision Appln. No.S-23 of 2010.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A'.
2. For hearing of C.M.A. No.88/2010 (S/A)
3. For hearing of main case.

12.03.2020

Mr. Vinod Kumar G. Jesrani, advocate for the applicant.

Mr. Muhammad Afzal Jagirani, advocate for the respondents No.1 to 3.

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This Civil Revision Application is directed against the order dated.17.02.2010 and decree dated.24.02.2010, whereby the learned 4th Additional District Judge, Shikarpur, while dismissing Civil Appeal No.38/2006 maintained the judgment and decree dated.01.02.2006 and 07.02.2006 respectively, whereby the learned 2nd Senior Civil Judge, Shikarpur, dismissed F.C Suit No.61/2002, under Order XVII, Rule 3 C.P.C.

2. Briefly stated facts of the case are that the applicant filed aforementioned Civil Suit for declaration, cancellation, possession, mesne profits and permanent injunction against the respondents alleging therein that she is the owner of agricultural land bearing Survey No.4 admeasuring 6-10 acres situated in Deh Sumrani, Taluka Lakhi, District Shikarpur, being purchased from Ainul Haque son of Abdul Samad through his attorney Altaf Ahmed son of Abdul Waheed Khan Pathan through registered sale deed, dated 11th March 1998, and the record of rights was also mutated in her name. It was case of the applicant that respondents/defendants No.1 to 3 managed forged and fabricated sale deed, dated 18.09.1994, and other documents and claimed the ownership and forcibly encroached upon the suit land.



3. The suit was contested by the respondent No.1, through written statement and thereafter learned trial Court settled issues out of pleadings of the parties on 11.05.2005 and then dismissed the suit under Order XVII, Rule 3 C.P.C vide judgment dated 01.02.2006. Against that, the applicant preferred Civil Appeal No.38/2006, which was heard and dismissed by the learned 4th Additional District Judge, Shikarpur, vide order dated 17.02.2010. It is against said judgment and order, the instant Civil Revision Application has been preferred by the applicant.

4. Heard learned counsel for the parties and perused the material available on record with their assistance.

5. It is an admitted position that the learned trial Court settled the issues on 11.05.2005 and then fixed the matter on 18.05.2005, on which date the counsel for the plaintiff filed lists of documents and witnesses and thereafter matter was fixed on 28.05.2005 for the evidence of the plaintiff side when counsel for the private respondents/defendants filed an adjournment application and thereafter, matter was adjourned to 08.06.2005 and then on 22.06.2005, 25.06.2005, 06.08.2005, 30.08.2005, 10.09.2005, 22.09.2005, 11.10.2005, 29.10.2005, 11.11.2005, 24.11.2005 and 28.11.2005, but the evidence of the plaintiff side could not be recorded, as on the said dates either the plaintiff's attorney was called absent or her counsel and hence matter was adjourned on the last mentioned date i.e. 28.11.2005 as last chance to 09.12.2005. On the said date the plaintiff's attorney and her counsel were present but the Presiding Officer of the trial Court was on leave and hence the matter was adjourned to 22.12.2005, on which date, the matter was again adjourned on the application of the counsel for the plaintiff to 09.01.2006. However, on the said date the matter was adjourned by the trial Court for want of time to 18.01.2006 and then to 26.01.2006

and finally on 01.02.2006 when the parties and their counsel were called absent and the suit was dismissed by the trial Court under Order XVII Rule 3 C.P.C.

6. It has been held by the Hon'ble Supreme Court of Pakistan in the case of MOON ENTERPRISER CNG STATION v. SUIT NORTHERN GAS PIPELINES LIMITED (2020 SCMR 300) as under :

"6. A bare reading of Order XVII, Rule 3, C.P.C. and case law cited above clearly shows that for Order XVII, Rule 3, C.P.C. to apply and the right of a party to produce evidence to be closed, the following conditions must have been met:

- i. *at the request of a party to the suit for the purpose of adducing evidence, time must have been granted with a specific warning that said opportunity will be the last and failure to adduce evidence would lead to closure of the right to produce evidence; and*
- ii. *the same party on the date which was fixed as last opportunity fails to produce its evidence.*

In our view it is important for the purpose of maintaining the confidence of the litigants in the court systems and the presiding officers that where last opportunity to produce evidence is granted and the party has been warned of the consequences, the court must enforce its order unflinchingly and unscrupulously without exception. Such order would in our opinion not only put the system back on track and reaffirm the majesty of the law but also put a check on the trend of seeking multiple adjournments on frivolous grounds to prolong and delay proceedings without any valid or legitimate rhyme or reason.

7. It may be observed that in the instant matter the last chance was given to applicant on 28.11.2005 to lead evidence and the matter was adjourned to 09.12.2005 when the Presiding Officer was himself on leave and when the suit was dismissed under Order XVII Rule 3 C.P.C, the matter was though fixed for evidence of the plaintiff but not with specific warning that the said opportunity will be the last

and failure to adduce evidence would lead to closure of the right to produce evidence and therefore, the learned trial Court was not justified to dismiss the suit of the applicant on the said date under Order XVII Rule 3, C.P.C. Hence impugned judgment and orders passed by the Courts below suffer from illegality requiring interference of this Court under its revisional jurisdiction.

8. I, therefore, set aside the impugned judgment, order and decree passed by the Courts below by allowing this Civil Revision Application, however, with subject to cost of Rs.,25,000/-, which shall be paid by the applicant/plaintiff to defendants by depositing it before the Nazir of the trial Court within thirty days hereof and remand the matter to trial Court with directions to fix a date as last and final chance to applicant/plaintiff for recording evidence of her side with caution that on her failure to adduce evidence on the date so fixed by the trial Court would lead to closure of her right to produce evidence. The learned trial Court shall be at liberty to pass appropriate order/judgment in accordance with law, in case the applicant failed to make her appearance either by herself or through her attorney or to produce her witnesses on the date so fixed by the learned trial Court.

9.7

Instant Civil Revision Application stands allowed in above terms.


Judge