

SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT

Mohammad Azam Khan, C.J.

Ch. Muhammad Ibrahim Zia, J.

Civil Appeal No. 62 of 2016

(PLA filed on 26.01.2016)

Basharat Mehmood son of Ch. Muhammad Aslam caste
Jaat, resident of Nohmal, Tehsil and District Mirpur.

.... APPELLANT

VERSUS

1. Raja Muhammad Waleed son of Raja Muhammad
Yaqoob Khan r/o Kasguma, Tehsil and District
Bhimber.
2. Muhammad Saleem son of Ch. Alif Din, caste Jaat
resident of Sector B-4, House No. K-81, Tehsil and
District Mirpur.
3. Additional District Judge, Mirpur.
4. Civil Judge, Mirpur.

.... RESPONDENTS

5. Tariq Mahmood,
6. Arif Mahmood,
7. Kashif Mahmood,
8. Sajid Mahmood,

9. Yasar Mahmood sons of Ch. Muhammad Aslam, castes Jaat, resident of village Nohmal, Tehsil and District Mirpur.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 15.12.2015 in Writ Petition No. 254/14)

FOR THE APPELLANT: Mr. Khalid Rasheed Chaudhary, Advocate.

FOR THE RESPONDENTS: Raja Khalid Mehmood Khan, Advocate.

Date of hearing: 25.10.2016.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, J.— This appeal by leave of the Court has been filed against the judgment of the High Court dated 15.12.2015, whereby the writ petition filed by the appellant, herein, has been dismissed.

2. The precise facts as stated are that the appellant filed a suit for declaration-cum-permanent injunction against the respondents in the Court of Civil Judge Mirpur regarding the land situate in Mozia Lehri, Tehsil and District Mirpur. During pendency of the suit,

respondent No. 1, filed an application on 05.11.2013 for annexing some documentary evidence with the plaint. After hearing the parties, the learned trial Court on 28.12.2013 allowed the application. The appellant filed a revision petition before the Additional District Judge, Mirpur which was dismissed vide order dated 09.07.2014. Feeling aggrieved, the appellant filed a writ petition before the High Court which met the same fate vide impugned judgment, hence this appeal by leave of the Court.

3. Mr. Khalid Rasheed Chaudhary, Advocate, the learned counsel for the appellant after narration of necessary facts submitted that the Courts below have failed to apply judicial mind to attend the legal proposition involved in this case. All the Courts have neglected the important statutory provision of Rule 2, Order XIII, CPC, wherein a penalty is provided that the party who fails to bring the documents alongwith his pleadings subsequently cannot be allowed to produce the same in evidence unless there is any sufficient legal justification. In this case, the application filed by the defendant-respondent on the face of it speaks that he remained negligent and has not produced the

documents at the relevant time as required under Rule 1, Order XIII of CPC. He forcefully argued that in the application even it has been mentioned that some documents intended to be produced have been prepared after filing of the pleadings of the parties which clearly proves the intention of the party to fill up the lacuna, therefore, the impugned judgments are not sustainable, hence, the same may be set-aside while accepting this appeal.

4. Conversely, Raja Khalid Mehmood Khan, Advocate, the learned counsel for the respondents seriously objected to the appeal on various grounds. He argued that the writ petition on the face of it was not maintainable as the matter clearly falls within the competence and jurisdiction of Civil Court. According to the statutory provisions of Civil Procedure Code, neither there is any lack of jurisdiction nor violation of law, therefore, such orders are immuned to be challenged in writ. While arguing on merits, he submitted that according to the scheme of law enforced it is the duty of the Court to call the parties at first hearing and apprise that which of the documents are admitted and which are denied. Without compliance of Rule 1, Order

XIII, CPC the penalty provided cannot be imposed. He further submitted that it is clear that some of the documents were non-existent at the time of filing of pleadings, thus, the relevant evidence which came into existence during process of litigation can be produced. The Courts below have exercised their jurisdiction properly, therefore, this appeal has no merit.

5. We have considered the arguments of the learned counsel for the parties and also gone through the record made available. The first point regarding the competency of the writ petition against the order passed by the Civil Court is of vital importance. According to the statutory provisions of section 44 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, while exercising the writ jurisdiction the High Court has to determine whether any person performing the functions in connection with the affairs of the Azad Jammu and Kashmir has acted according to law or not, or has failed to do what the law requires to be done. According to the facts of this case, the matter falls within the competence and jurisdiction of the Civil Court. The Civil Court is vested with the vast jurisdiction to determine the question of production of

documentary evidence and its admissibility. It is clear that there is no question of lack of jurisdiction.

6. So far as the other aspect that whether the Courts below have violated any provision of law while passing the impugned orders is concerned, the proposition involved in this case has to be dealt with according to the provisions of Order XIII of CPC, the rule 1 of which reads as follows:-

“1. Documentary evidence to be produced at first hearing.— (1) The parties or their pleaders shall produce at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.”

(2) The Court shall receive the documents so produced: Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) On production of documents under this rule, the Court may call upon the parties to admit or deny the documents produced in the Court and record their admission or, as the case may be, denial.”

Thus, it is clear that at the time of first hearing of suit, the parties shall produce the documentary evidence on which they intend to rely and the Court, after proper scrutiny and application of judicial mind, shall record the admission or, as the case

may be, denial of the parties. According to the scheme of law, if the provision of rule 1 is applied in its true spirit then rule 2 comes into operation but when rule 1 has not been applied the question of application of rule does not arise, as rule 2 speaks that the provision of non-production of the documentary evidence will only operate to the extent of document which has not been produced in accordance with the requirement of rule 1. In this regard, this Court has already enunciated the principle of law in the case reported as *Rashid Mehmood and others vs. Sardar Begum and others* [2013 SCR 200], wherein in paragraph 7 it has been observed as follows:-

“7. We have also appreciated the relevant statutory provision in the light of the arguments of the learned counsel for the appellants. Rule 2 of order XIII of CPC speaks as following:-

‘2. Effect of non-production of documents.--- No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for doing so.’

The provision of the statutory provision clearly reveals that a party for production of

documents at subsequent stage is burdened with to satisfy the Court with good cause of non-production of the documents in accordance with the requirement of rule 1 of order XIII of CPC. Thus, it is clear that the party is required to show good cause only if the provision of rule 1 of order XIII are complied with in letter and spirit. The requirement of rule 1, CPC is that; at first hearing of the suit the parties or their pleader shall produce all the documentary evidence of every description in their possession or power on which they have relied and have already filed in the Court and all the documents which the Court has ordered to be produced. Under sub-rule (2), it is further required that the Court shall receive the documents so produced and under sub-rule (3), it is the duty of the Court that on production of documents under this rule, the Court may call upon the parties to admit or deny the documents produced in the Court and record their admission or as the case may be, denial. The stage of first hearing is also prescribed by the Code. According to rule 1(5) of order XIV, the Court at the first hearing of the suit after appreciation of the pleadings of the parties, if necessary, examination of the parties, shall proceed to frame the issues. Thus, the effect of non-production of documents as incorporated in rule 2 or order XIII, C.P.C. will come into operation, if the requirement of rule 1 is fully observed by the parties as well as by the Court and if these requirements are not fulfilled, effect of rule 2 does not come into operation. Moreover, the phraseology of rule 2 is very much clear. It does not prohibit the production of documents but only obliges the parties to show good cause to the satisfaction of the Court. According to new era trend the parties cannot be debarred from production of documents at belated stage which are not in their possession or power. The Courts are also lenient to allow the production of

documents, which are copies of the official record and it is also held that this rule should be interpreted liberally to advance the cause of justice. The learned High Court has rightly placed reliance on PLD 1977 AJK 78. The principle of law and criteria laid down in the report have been correctly applied. We don't find any wrong with the impugned judgment, hence finding no force, this appeal is hereby dismissed without any order as to costs."

The statutory provisions of Rule 2 of Order XIII, CPC itself speak that the Court is vested with the power to allow the production of documents if it is satisfied that the party has succeeded in showing the sufficient cause. In the instant case, the trial Court has recorded the reason that production of these documents is necessary for the decision of the case.

7. So far as the question of satisfaction is concerned, it is upto the Civil Court and in writ jurisdiction the same cannot be substituted by the High Court, thus, the Civil Court has to determine the reasons and justification for accepting the application for producing the documentary evidence. The decision of the trial Court is always subject to power of appellate Court, hence, in other way the parties have remedy of appeal against the final adjudication to question the trial Court's findings. When the Court, having jurisdiction and powers, exercises its jurisdiction within

limits of law it is not open to be challenged in writ. The order of the trial Court has also been judged by the Additional District Court, therefore, there is neither any lack of jurisdiction nor violation of law. The High Court has rightly declined to entertain the writ in such state of affairs. The appellant has failed to make out any legal ground for interference.

Therefore, finding no force, this appeal stands dismissed with costs.

Mirpur,
26.10.2016

JUDGE
(J-I)

CHIEF JUSTICE