

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, ACJ.

Civil PLA No.40 of 2020

Civil Misc. No.36 of 2020

(Filed on 27.02.2020)

Shafique-ur-Rehman

.....PETITIONER

VERSUS

Abdul Shakoor Khan & others

....RESPONDENTS

[On appeal from the judgment of the High Court
dated 10.12.2019 in writ petition No.336/2013]

(Application for interim relief)

FOR THE PETITIONER: Ch. Muhammad Afzal,
Advocate.

FOR THE RESPONDENTS: Mr. Zaffar Iqbal Ch.,
Advocate.

Date of hearing: 18.05.2020

JUDGMENT

Raja Saeed Akram Khan, ACJ—The captioned
petition for leave to appeal has arisen out of the
judgment of the High Court dated 10.12.2019,

whereby the writ petition filed by the petitioner, herein, has been dismissed in limine.

2. The brief facts of the case are that the petitioner, herein, filed a suit pre-emption suit before Civil Judge, Mirpur on 05.07.2007. During the pendency of the suit, Muhammad Lal, respondent No.2 filed an application for amendment in the written statement. The application was disallowed by the trial Court on 09.02.2009, however, the revision petition filed by respondent No.2 was accepted and he was allowed vide judgment dated 06.06.2011 to file amended written statement before the trial Court on 30.06.2011. It is the claim of the petitioner that the respondent did not file the written statement on the date mentioned, however, the learned trial Court in violation of the order of the High Court allowed respondent No. 2 to file amended written statement through order dated 10.05.2012. Against this order a revision petition filed before the District Judge, Mirpur stood dismissed on 20.08.2013. Finally, the petitioner filed a writ petition before the High Court

which has been dismissed in limine through the impugned judgment.

3. Ch. Muhammad Afzal, Advocate, the learned counsel for the petitioner stated that the learned High Court has dismissed the writ petition on misconception of law and facts. The impugned order is against the clear statutory provisions of law. While referring to Order VI, Rule 18 of the CPC, he submitted that this statutory provision provides that if a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time unless the time is extended by the Court. He submitted that the respondent never applied for extension in the time but the trial Court in utter disregard of the statutory provisions as well as order of the High Court has allowed the respondent to file amended written statement. He further submitted that the observations of the High

Court that it was not mentioned in the judgment that in case of failure, the right of defence would be closed; are also against the statutory provisions as when the statutory provisions are holding the field, therefore, there was no need of any such mention. He submitted that important legal provisions are involved, hence, grant of leave is justified.

4. On the other hand, the learned counsel for the respondents, Ch. Ashiq Hussain, Advocate, submitted that the impugned judgment is well in accordance with law. At this belated stage, the objection on filing of amended written statement is not warranted under law. The learned High Court has rightly observed that in the referred judgment it was not mentioned that in case of failure to file the amended written statement the right of defence would be closed. No violation of law has been pointed out, therefore, this petition is liable to be dismissed.

After hearing the learned counsel for the parties at some length, in my opinion, the proposition raised, specially, with reference to

statutory provisions of Order VI, Rule 18 of the CPC; among others, require detailed deliberation. Leave to appeal is, therefore, granted. The petitioner shall deposit security of Rs.1000/- within a period of one month otherwise the leave granting order shall automatically stand rescinded. The office shall proceed further according to rules.

As leave has been granted and the petitioner has succeeded in making out a prima facie arguable case, therefore, till disposal of the appeal the status quo prevailing at the moment shall be maintained.

ACTING CHIEF JUSTICE

Mirpur,
18.05.2020