

**IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD**

R. A No.28 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of Hearing : 14.03.2018

Date of Order : 14.03.2018

Mr. Moula Bux Ayoub Leghari, Advocate for applicant.

ORDER

AGHA FAISAL, J: This revision application has been instituted impugning the order dated 23.12.2017 (*hereinafter referred to as the "Impugned Order"*), passed by the Court of the learned District Judge, Tando Muhammad Khan (*hereinafter referred to as the "Trial Court"*). The content of the Impugned Order is reproduced herein below:

"Heard both the sides and perused the record.

The plaintiff through this application has sought production of list of witnesses which could not be filed within seven days after framing of issues.

According to rule 1 sub rule 2 of order 16 CPC, the Court is empowered to receive the list of witnesses not filed within the time on showing good cause and reason by the party.

In the present case no good cause or reason is shown by the plaintiff for non-production of list of witnesses within seven days time after framing of the issues. The issues were framed on dated 30.09.2016 and the present application is filed on dated 27.10.2016, after lapse of about one month.

Since, no any good cause or reason is shown for production of list of witnesses at later stage, therefore, I see no merit in the application, therefore, the same is hereby dismissed, with no order as to cost. The reliance is placed on PLD 2013 Supreme Court, Page No.255."

2. The applicant had also filed an interlocutory application, wherein the suspension of proceedings in the Land Acquisition Case had been sought pending disposal of the subject revision application. However, it was considered proper by this Court that instead of merely deciding the interlocutory application it may be prudent to hear the main revision application and pass the appropriate orders thereupon.

3. It was contended by the learned Counsel for the applicant that by virtue of the Impugned Order the learned Trial Court dismissed an application, by which the applicant had prayed as follows:

“It is respectfully prayed on behalf of the plaintiff that this Honourable Court may be pleased to allow them to produce and examine following witnesses, on consideration of the facts and grounds disclosed in the accompanying affidavit.

1. *Abdul Qayoom S/o Akbar Ali, Attorney of Plaintiff.*
2. *Muhammad Ameen Turk*
3. *Abdul Jabbar S/o Muhammad Boota”*

4. The learned Counsel for the applicant stated that the Impugned Order is contrary to the law and hence the same may be set aside.

5. The learned Counsel did not raise any specific grounds in support of his generalized assertion that the Impugned Order was liable to be set aside.

6. The provisions of Section 115 CPC were pointed out to the learned Counsel for the applicant and it was queried as to which of those provisions were infringed by the learned Trial Court while rendering the Impugned Order.

7. It may be pertinent to reproduce the relevant provisions of Section 115 CPC herein below:

“Sec. 115.—Revision.—[(1) The High Court may call for record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears--

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

the High Court may make such order in the case as it think fit]”

[Provided that, where a person makes an application under sub-section, he shall, in support of such application, furnish copies of the pleadings, documents and order of the subordinate Court and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court.]”

8. The learned Counsel failed to cite any infirmity in the Impugned Order which would precipitate an exercise of jurisdiction of this Court under Section 115 CPC.

9. Order XVI Rule 1(2) CPC clearly stipulates that a party shall not be permitted to call witnesses other than those contained in the list, except with the permission of the Court and after showing good cause for the omission of the said witnesses from the list.

10. Therefore, it was the duty of the applicants to have demonstrated before the learned Trial Court that not only were the said witnesses essential for determination of the controversy but also that there was sufficient / good cause for the list of the said witnesses not having been provided to the Court within the designated time.

11. It appears from a bare perusal of the Impugned Order that no good cause was shown to the learned Trial Court.

12. Even during the course of the hearing today the learned Counsel for the applicants failed to cite any cogent rationale based whereupon their application may have been granted by the learned Trial Court.

13. It is *prima facie* apparent that the Impugned Order is passed on an interlocutory application and there is ample authority to suggest that interference in such orders by the High Court could only be merited in exceptional or extraordinary circumstances.

14. The aforesaid principle is fortified by the judgment in the case of *KHALID MEHMOOD THROUGH SPECIAL ATTORNEY V. JUDGE FAMILY COURT, FAISALABAD AND ANOTHER*, reported as 2010 YLR 336, wherein it was held as follows:

“The Impugned Order passed by the learned Judge, Family Court, is not only clothed with authority but is also fully justified. The Impugned Order dated 16-1-2009 was to all intents and purposes of interlocutory in nature. The law does not provide any appeal or revision in the hierarchy of Family Laws. The petitioner on proper showings would have an opportunity to challenge the same if and when he would bring an appeal against the final decision/judgment in terms of section 14 of the Family Courts Act, 1964. There is no dearth of authority that the expression “decision” means final decision and the same will be read ejusdem generis with “judgment”. In other words, the petitioner will have an adequate and alternative remedy at the time of appeal as aforementioned. Considering the conduct of the petitioner, the learned Judge Family Court was constrained to pass the

Impugned Order dated 16-1-1999. There was no illegality or irregularity in passing these orders. The present writ petition is without any substance. It is not entertainable and is consequently dismissed in limini.”

15. This issue has also been deliberated upon by the august Supreme Court *inter alia* in the case of *MUHAMMAD BARAN AND OTHERS V. MEMBER (SETTLEMENT & REHABILITATION) BOARD OF REVENUE, PUNJAB AND OTHERS*, reported as *PLD 1991 SUPREME COURT 691*, wherein it was maintained as follows:

“Therefore, before a person can be permitted to invoke this discretionary power of a Court, it must be shown that the order sought to be set aside had occasioned some injustice to the parties. If it does not work any injustice to any party, rather it causes a manifest illegality, then the extra ordinary jurisdiction ought not to be allowed to be invoked.”

16. It is observed that there is no provision for appeal against the interlocutory orders within the purview of the Land Acquisition Act 1894 (hereinafter referred to as the “Act”), where under the proceedings before the learned Trial Court are taking place, and that the final order therein is subject to appeal under the provisions of Section 54 therein.

17. It would follow that any detriment suffered by the applicants by virtue of the Impugned Order, if any, could be determined in an appeal against the final order in the proceedings and that in the presence of such a remedy being available to the applicants the interference of the Court at this stage is not merited.

18. Even otherwise, no extraordinary or exceptional circumstances have been demonstrated by the applicants to compel this Court to exercise its jurisdiction in this regard

19. It is also observed from a perusal of the Impugned Order that the learned trial Judge passed the same after hearing of the parties concerned and had come to the assessment that no good cause has been shown for the grant of the interlocutory application.

20. This Court has also perused the affidavit, supporting the subject application, and is of the view that no cogent grounds have been pleaded therein either.

21. It is the considered view of this Court that no grounds have been invoked by the applicants to merit the interference of this Court as there is no suggestion that the Impugned Order is either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity.

22. In view of the foregoing, it is the view of this Court that the Impugned Order is in due conformity with the law and does not suffer from any infirmity whatsoever and therefore the same is hereby upheld.

23. The present revision application, alongwith the interlocutory application/s therein, was dismissed earlier today vide a short order, the contents whereof are reproduced herein below:

“The Court has heard the learned Counsel for the applicant and for the reasons to be recorded later, the present revision application, along with listed application, is dismissed.”

24. These are the reasons for the above short order dated 14.03.2018, wherein subject revision application was dismissed.

25. It is stipulated that the observations made herein are of a tentative nature and shall have no impact upon the determination of any dispute between the parties before any forum of appropriate jurisdiction in due consonance with the law.

26. The Office is directed to convey a copy hereof to the learned Trial Court for reference and record.

JUDGE

Shahid