

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
C. P. No. D-7664 of 2022

Date	Order with signature of Judge
------	-------------------------------

FRESH CASE.

1. For orders on Office Objection No.18 & 31.
2. For orders on Misc. No.32511/2022.
3. For orders on Misc. No.32512/2022.
4. For hearing of main case.

31.01.2023.

Petitioner Nafees Ahmed Khan is present in person.

-----

**YOUSUF ALI SAYEED, J. -** The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Order dated 01.10.2022 made by the learned Additional District Judge-III, Karachi, East, dismissing Civil Revision No.98/2022 filed by him against the earlier dismissal of his application under Order 16 Rule (2) (6) & (7) read with Section 151 CPC in Civil Suit No.524/2012, by the learned IX-Senior Civil Judge, Karachi, East, vide Order dated 28.05.2022.

2. The backdrop to the matter is that Petitioner had filed the aforementioned Suit, whereas the Respondent No.1 had also filed Suit No.1108/2012 in respect of the same immovable property. Both Suits were consolidated and decided in terms of a judgment dated 09.09.2015, whereby the Suits were dismissed. Cross-Appeals were preferred, which were allowed, with the judgment being set aside and the Suits being remanded with the direction to allow the Respondent No.1 to cross-examine the witnesses of the Petitioner and to lead his own evidence. In compliance, the evidentiary proceedings ensued accordingly and the matter was then put up for final arguments.

3. It is at that stage that the Application was moved for calling certain officials as Court Witnesses, which was dismissed with the finding that “good cause” had not been shown for such a plea and that it appeared merely to be an attempt to impede final adjudication. The Relevant excerpt of the Order of the trial Court reads as under:-

“Party seeking to summon witness has to show “good cause” as per provisions of Order XVI Rule 1 CPC. Party in default has to show a legally sufficient reason as to why its request should be granted or its inaction/omission should be excused, in other words the judicial conscious of the court should be satisfied with justifiable reasons. Party in default could not, as a matter of right or as a matter of course without assigning or establishing any good cause for the omission, as for calling/summoning or even producing witness(es) only on account of lame excuse/reason and bald assertions that it shall be in the interest of justice and/or it shall facilitated the court in deciding the matter. Reliance is place upon the case of Muhammad Anwar and others versus Mst. Ilyas Begum and others reported in PLD 2013 Supreme Court 255. The learned counsel for plaintiff has not assigned any good cause except that defendants are custodian of public record hence necessary witnesses. I am afraid, this could not be the ground for calling a witness for a simple reason that, if in view of the plaintiff, the documents were necessary to be brought on record, he could have obtained certified true copies of these documents and could have produced the same, if so advised. Furthermore even the plaintiff side had not stated in their application or in supporting affidavit that what documents they wish to bring on record through these witnesses. I do not find any good cause to allow instant application which is hereby dismissed.”

4. The Revisional Court concurred with that assessment while observing that:-

“4. Admittedly, both the parties were hotly contesting both the suits, and side of plaintiff was closed by his counsel after being satisfied that there was no need to bring further evidence and more pertinently previous appeal of applicant was allowed by learned Appellate Court and he had ample opportunity to bring the evidence before learned trial Court wherein he remained fail. Through the impugned application, applicant wanted to bring the evidence through

witnesses who were already made party in the suit. Both the suits were already decided at the first round of litigation when no such necessity was brought by plaintiff side, and all of a sudden in the second round of litigation at the very belated stage of final arguments, plaintiff side moved the application in hand which was declined. The learned trial Court has, as such, rightly held that there was no “good cause” for allowing the subject application which was its main ingredient. Moreover, in the instant revision application applicant and his counsel are continuously not appearing, which shows that applicant somehow wants to delay the proceedings without any progress which conduct cannot at all be allowed.”

5. On the face of it, proper reasons have been assigned by the trial Court and Revisional Court in their determination, and on query posed to the Petitioner as to what perversity or illegality afflicted the Orders of the fora below, no cogent response was forthcoming.
  
6. As such, we are of the view that the Petition is misconceived, with no case for interference being made out in exercise of the Constitutional jurisdiction of this Court. Hence, we hereby dismiss the Petition *in limine*, along with the pending miscellaneous applications.

JUDGE

CHIEF JUSTICE

MUBASHIR