

HIGH COURT OF AZAD JAMMU & KASHMIR

*Civil Appeal No.36/2020;*  
*Date of Institution 10.02.2020.*  
*Date of Decision 09.01.2023.*

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M/s Nouman Construction Company  
through Mir Attiqu-ur-Rehman R/o village  
Butdara Tehsil Pattika District  
Muzaffarabad.

*Appellant*

*VERSUS*

1. Raja Pervaiz Hussain S/o Raja  
Muhammad Hassan R/o Sadiqa  
Tehsil Pattika Naseerabad District  
Muzaffarabad;

*Real-Respondent*

2. Azad Govt. through its Chief Secretary  
Azad Jammu & Kashmir, having its  
office at New Secretariat  
Muzaffarabad;

3. Secretary Public Works and  
Communication having its office at  
New Secretariat Muzaffarabad;

4. Chief Engineer Public Works  
Department having its office at New  
Secretariat Muzaffarabad.

*Proforma-Respondents*

APPEAL AGAINST THE ORDER DATED 15.01.2020

**Before:- Justice Sardar Muhammad Ejaz Khan, J.**

PRESENT:

Nemo for the appellant.

Muhammad Naseer Abbasi, Advocate for respondent No.1.

Representative of Public Works Department.

JUDGMENT:

The captioned appeal has been directed against the impugned order dated 15.01.2020 passed by the learned Additional District Judge, Pattika/Naseerabad, District Muzaffarabad whereby the right of defence pertaining to filing written statement was closed.

2. Synthesized facts forming the background of the instant appeal are that plaintiff-respondent No.1, herein, filed a suit for recovery of amount of Rs.2,50,00,000/- as damages from defendants-appellant & proforma-respondents, herein, before the learned Additional District Judge, Pattika/Naseerabad, on 14.07.2016 and thereafter, amended suit was filed with

permission of the Court on 25.07.2017. It has been stated that the defendant-appellant filed an application under Order VII Rule 11 of Civil Procedure Code for rejection of plaint upon which plaintiff-respondent No.1 filed objections. The learned Court below vide its order dated 20.04.2019 rejected the application filed by the defendant-appellant against which a revision petition was filed before this Court, which too after hearing was dismissed vide order dated 07.12.2019 while the said order was not conveyed and communicated to him and the same was presented by plaintiff-respondent No.1 on 15.01.2020 before the trial Court. It has further been stated that the learned Court below without considering the matter ordered to submit the written statement on the same day i.e. 15.01.2020 for which the learned counsel for the appellant requested to provide time for the purpose and also verbally requested to summon all the witnesses of

respondent No.1 for cross-examination but the learned trial Court without taking into consideration the real controversy passed the impugned order dated 15.01.2020, which is illegal, fanciful, arbitrary and unlawful, hence, it has been prayed that the same may be recalled in the interest of justice.

3. Despite repeated calls since, nobody has turned up on behalf of the appellant, which shows lack of interest on his part to prosecute the case, hence, it deems appropriate to decide the matter after perusal of record instead of dismissing the appeal for want of prosecution because the original *lis* is pending adjudication since long before the trial Court. Arguments to the extent of respondents have been heard and the record of the case appended along-with the appeal has also been perused.

4. A contemplate perusal of record shows that defendant-appellant was time and

again ordered to file written statement as he was provided final opportunity vide order dated 07.05.2019 but the needful was not done then the learned trial Court vide its order dated 16.05.2019 last and final opportunity was granted subject to payment of Rs.500/- as costs. On next date of hearing i.e. 28.05.2019, nobody was present on behalf of the defendant-appellant, hence, ex-parte proceedings were initiated against him vide order dated 28.05.2019, which was recalled subject to payment of Rs.1000/- as costs vide order dated 22.10.2019 whereas the learned trial Court vide its order dated 10.12.2019 ordered to defendant-appellant for filing written statement failing which his right of defence would be deemed to have been closed and the case was fixed for the purpose on 15.01.2019.

5. It depicts from the record that on the said date i.e. 15.01.2019, a request was made

on behalf of the learned counsel for the defendant-appellant regarding seeking further time to file written statement, which was allowed with the direction to file the same at 02:30 P.M. but again the case was repeatedly called, however, nobody has turned up on behalf of defendant-appellant on the given time, hence, the learned trial Court has left no option except to close the right of defence of the defendant-appellant.

6. It is pertinent to point out that under Order VIII Rule 1 the period for filing written statement shall not ordinarily exceed thirty days, however, under Rule 10 of the aforesaid Order, the same is not filed within the time fixed by Court, the Court may pronounce judgment against him, or pass an appropriate order in relation to the suit as it thinks fit. It would be advantageous to reproduce the

aforesaid Codal provisions law, which read as under:-

*“1. The defendant may, and, if so required by the Court, shall at or before the first hearing or within such time as the Court may permit, permit, present a written statement of his defence:*

*[Provided that the period allowed for filing the written statement shall not ordinarily exceed [thirty] days].*

*10. Where any party from whom a written statement is so required fails to present the same within the time fixed by Court, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.”*

It has been held by the Hon’ble Supreme Court of Pakistan in a case reported as *Riaz-ul-Haq and others vs. Muhammad Asghar and others* [2017 SCMR 1841] that:

*“Order VIII, Rule 10 of C.P.C. prescribes a timeframe for filing a written statement which cannot ordinarily exceed 30 days. A perusal of the record indicates that the petitioners were granted at least four opportunities spread over a period of about five months to file*

*the written statement. However, despite the time given and indulgence shown by the Court, the petitioners failed to file their written statement without any lawful justification. Where law prescribes a time for doing a certain act, the same should ordinarily be adhered to unless cogent reasons and lawful justification is presented before the Court justifying an extension of such time. No such justification was pleaded before the trial, appellate or revisional Court. Even before us, other than submitting that one more opportunity may be granted against payment of costs, the learned counsel did not furnish any reason or justification for the petitioners' failure to file their written statement despite repeated adjournments granted by the Court.”*

The Hon'ble Supreme Court of Pakistan in a case reported as *Moon Enterpriser CNG Station, Rawalpindi Vs. Sui Northern Gas Pipelines Limited, through General Manager, Rawalpindi and another* [2020 SCMR 300] held that:-

*"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 unfailingly 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. Where the Court has passed an order granting the last opportunity, it has not only passed a judicial order but also made a promise to the parties to the lis that no further adjournments will be granted for any reason. The Court must enforce its order and honour its promise. There is absolutely no room or choice to do anything else. The order to close the right to produce evidence must automatically follow failure to produce evidence despite last opportunity coupled with a warning. The trend of granting (Akhri Mouqa) then (Qatai Akhri Mouqa) and then (Qatai Qatai Akhri Mouqa) make a mockery of the provisions of law and those responsible to interpret and implement it. Such practices must be discontinued, forthwith".*

7. By taking into account the above quoted case law and circumstances of the case, the reasons recorded by the learned trial Court for closing the right of defence regarding filing written statement of defendant-appellant in the impugned order dated 15.01.2020 are quite in right direction, which leave no room to be interfered with by this Court, therefore, the instant appeal, finding no force, is hereby dismissed with costs. As the parties are in litigation since long rather the matter is being prolonged by using different tactics, hence, the learned trial Court is directed to decide the matter within three months from the date of receipt of this judgment in accordance with law.

Muzaffarabad:  
09.01.2023(J.ZEB)

**JUDGE**

APPROVED FOR REPORTING

**JUDGE**