

**COURT OF SHEIKH RASHID MAJEED,
DISTRICT JUDGE, MUZAFFARABAD, AJ&K**
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File No: 45 - Revision Petition
Date of Institution: 22.09.2017
Date of Decision: **30.10.2017**

Abdul Hameed S/O Ameerullah, Caste Rajpoot, R/O Panjoor, Tehsil Naseerabad (Pattika), District Muzaffarabad.

(PETITIONER)

VERSUS

(1) Mst. Naseem Bibi D/O Faqeer Muhammad, Caste Sohlan Mir, R/O Village Sarli Sacha, Tehsil Naseerabad (Pattika), District Muzaffarabad, presently Mohallah Shahnarah, Muzaffarabad, (2) Tehsildar Revenue Department Muzaffarabad, (3) Patwari Village Gojra, Muzaffarabad.

(RESPONDENTS)

REVISION PETITION

PRESENT:

1. Muhammad Pervaiz Khan Mughal, Advocate for the Petitioner.
2. Mir Abdul Latif, Advocate for the Private Respondent

JUDGMENT:

The captioned revision petition has been filed against the order dated 25.07.2017 of learned Civil Judge, Court No. I, Muzaffarabad, whereby application, filed by the petitioner, for allowing to produce witness, has been dismissed.

2. BRIEF FACTS of the case necessary for the disposal of instant revision petition are that plaintiff/petitioner herein filed a suit for declaration along with cancellation of sale deed, before the trial Court. After

institution of said suit, trial Court initiated necessary proceedings. Case before the trial Court was at the stage of evidence of the plaintiff. Meanwhile, plaintiff/ petitioner herein filed an application for granting permission to produce pro-forma defendant as witness. It was claimed in said application that initially, Atif Maqsood Gillani S/O Maqsood Gillani was mentioned as pro-forma defendant. Later on name of said defendant was omitted from the plaint. Said person is an important witness whose evidence statement is necessary for just decision of the case. Lastly, it was prayed that plaintiff may kindly be allowed to produce said witness in support of his version.

3. On filing of said application, trial Court obtained written objections from opposite party which were filed on 20.05.2017. Trial Court after hearing arguments, through impugned order dated 25.07.2017, dismissed the application.

4. Feeling himself aggrieved by impugned order of trial Court, petitioner has filed instant revision petition.

5. Arguments heard.

6. I have heard the learned Counsel for the parties. Record of the case is also examined. Perusal of record reveals that plaintiff/ petitioner herein through application before trial Court has prayed that Atif Maqsood Gillani S/O Maqsood Gillani is an important witness. Petitioner/ plaintiff may kindly be allowed to produce him as witness. Perusal

or record reveals that initially said Atif Maqsood Gillani was entered as proforma defendant in the plaint whose name was later on omitted. However, there is no legal bar to produce him as witness. List of witnesses produced by defendant also includes name of said witness at serial No. 5. The case before trial Court is at the stage of evidence of the plaintiff. A person whose name is not mentioned in list of witness can be produced by any party at later stage. In a case witnesses were even summoned by the Court after lapse of three and half years.

Civil Procedure Code (V of 1908) --- O. XVI, R. 1(2) --- Constitution of Pakistan (1973), Art. 185(3) --- Summoning of witness after a delay of 3-1/2 years --- Trial Court summoned the witness required by plaintiff to be produced and the order was maintained by Appellate Court as well as by High Court in exercise of Constitutional jurisdiction --- Validity --- Trial Court was competent to grant permission under O. XVI, R. 1(2) C.P.C. for summoning any witness of its discretionary jurisdiction had granted permission to summon the witness for recording evidence and the order was maintained by Appellate Court as well as by High Court --- Supreme Court in exercise of jurisdiction under Art. 185(3) of the Constitution, declined to interfere with the orders --- Leave to appeal was refused.

(2004 SCMR 1367)

I am of the view that trial Court has passed the impugned order in a cursory manner without assigning any cogent or convincing reasons. In these circumstances, impugned order dated 25.07.2017 of Civil Judge Court No. I, Muzaffarabad is hereby set-aside. Application filed by the plaintiff/ petitioner herein to produce Atif Maqsood Gillani as witness is hereby allowed subject to payment of costs Rs. 500/-.

A copy of this judgment be sent to trial Court. File be consigned to record room after its due completion.

ORDER ANNOUNCED.

(Sheikh Rashid Majeed)
District Judge, Muzaffarabad