





RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: HON'BLE JUSTICE MR. SHOUKAT ALI RAKHSHANI
SUBJECT: FAMILY LAWS/ADDITIONAL EVIDENCE IN APPELLATE STAGE
DATE: 09-04-2025
BY: IZHAR AHMED LANGOVE
ASSISSTED BY: SYED MUHAMMAD USMAN

QUERY: *Whether an appellate court is required to dispose of an application for additional evidence under Order XLI Rule 27 of the Code of Civil Procedure (CPC), 1908, at the appellate stage prior to deciding the appeal on merits, or whether the appellate court can lawfully decide such application jointly with the final adjudication of the appeal itself?*

Yes, the appellate court is required to dispose of an application for the production of additional evidence under Order XLI Rule 27 of the Code of Civil Procedure, 1908, **by passing a reasoned order at the appellate stage prior to the final adjudication of the appeal. The application must be considered and decided separately, with the court recording its reasons for allowing or rejecting the production of such evidence before proceeding to decide the appeal on merits.** This procedural requirement is not merely a formality but a substantive safeguard to ensure that the right to produce additional evidence is fairly evaluated in light of the criteria laid down under the said provision. A failure to determine the application independently and before the final adjudication of the appeal amounts to a jurisdictional error, rendering the appellate proceedings susceptible to challenge. The rationale is to avoid prejudicing the parties by deciding the appeal on an incomplete or improperly constructed record, and to ensure that justice is administered in its fullest sense. In this regard reliance is placed on **2024 CLC 1538 Lahore Highcourt-Lahore**. The relevant part of the Judgment is reproduced as Under:

16. After having an overview of the principles laid down herein-above, it can safely be inferred that in case of pendency of some miscellaneous application, it is incumbent upon the court to first decide the application and then advert to the merits of the case. The primary object is that a lis should be buried in all respects as per canons of justice and by deciding the miscellaneous application in the first instance, allowing parties to retrace the steps fairly and equitably.

Allowing a court to decide the application for additional evidence alongwith the appeal would amount to give a premium to decide such application in negative. The joint decision of the miscellaneous application and appeal would not be even possible, if the court ultimately reaches at the conclusion that the application has due force and it is to be accepted. It would thus be in all fairness that the court should first decide the miscellaneous application and then pass final order/judgment qua the lis.

17. For the foregoing reasons, this petition is accepted and the impugned judgment and decree dated 27.01.2012, passed by the learned Additional District Judge, Tala Gang is set-aside. As a sequel whereof, the appeal as well as application under Order XLI, Rule 27 of "C.P.C." shall be deemed pending before the learned Additional District Judge, Tala Gang, who shall first decide the application for additional evidence and thereafter advert to the merits of the appeal through a separate judgment strictly in accordance with law.

This principle has been held by honourable Supreme Court of Pakistan in case **MUHAMMAD AZAM----Appellant Versus MUHAMMAD ABDULLAH through L.Rs.---- Respondents** reported as **2009 SCMR 326**

The relevant facts of the case are mentioned as under.

Relevant Facts:

In **2009 SCMR 326**, the appellant, Muhammad Azam, had purchased land which was later pre-empted by the respondent. The suit for possession through pre-emption was decreed in favour of the respondent by both the trial and appellate courts. The appellant then filed a civil revision before the Lahore High Court and also submitted a **miscellaneous application under Order XLI Rule 27 CPC** for **production of additional evidence**. Although the High Court acknowledged the application and stated that it would be decided with the main case, the court failed to dispose of it before delivering judgment. The revision was decided without considering the documents attached to the pending application. The Supreme Court held that the appellant's case had been **prejudiced** due to the High Court's omission to decide the application and **remanded the case** for fresh adjudication after disposal of the pending application.

Courts Findings:

The Supreme Court in **2009 SCMR 326** reaffirmed the essential procedural requirement that an application for additional evidence under Order XLI Rule 27 CPC must be decided by the appellate or revisional court before the final adjudication of the appeal or revision. The Court observed that the failure to determine such an application results in serious prejudice to the applicant and

undermines the fairness of the proceedings. The High Court's omission to address the application, despite acknowledging it and issuing notice, was held to be a procedural lapse significant enough to vitiate the judgment. Consequently, the Supreme Court set aside the impugned judgment and remanded the matter, emphasizing that substantive justice demands a clear and reasoned decision on all pending interlocutory applications before disposal of the main lis. Relevant part of the Judgment is reproduced as under;

.....We have examined the record of learned High. Court, according to which appellant had filed application (Civil Miscellaneous Application No.370/C of 1990) for production of additional evidence on 23-1-1990. Notice was issued to the respondent and it was observed that this application shall be decided along with main case (Civil Revision No.83 of 1990). However, the learned High Court decided the revision petition brought by appellant without taking into consideration documents in question and without disposal of said application for additional evidence. As such we find that case of appellant has been prejudiced. Even otherwise the case of appellant is that he is co-sharer in the Khewats in question, therefore, it was in the interest of justice that High Court should have decided his application before final adjudication of the case.

4. For what has been discussed above, we are- of the considered opinion that impugned judgment is not sustainable in law. As such this appeal is accepted, impugned judgment is set aside and the case is remanded to the learned High Court for decision afresh on merits and in accordance with law after dealing with the application for additional evidence.

This principle has also been discussed and affirmed by Honourable Supreme court in case reported as 2008 SCMR 1259 **Mst. IMTIAZ BEGUM---Appellant Versus Mst. SULTAN JAN and others----Respondents**

The relevant Facts of the judgment are produced as under.

Relevant Facts:

In 2008 SCMR 1259, the petitioner, Mst. Imtiaz Begum, had filed a civil suit for declaration and specific performance regarding a disputed property. After success in both the trial and appellate courts, the judgment was reversed by the Peshawar High Court in a revision petition. During the pendency of that revision, a co-petitioner, Qamar Zaman, filed a civil miscellaneous application seeking withdrawal of the revision on the basis of a compromise. However, the High Court failed to decide this application either prior to or along with the final decision in the revision. The impugned judgment also appeared to merge decisions from a separate revision petition without providing a distinct adjudication for the one in which the application

was filed. Consequently, the Supreme Court set aside the judgment and remanded the matter to the High Court for decision afresh after disposing of the pending miscellaneous application.

Findings of the Court

The Supreme Court in *2008 SCMR 1259* reiterated that the adjudication of a pending miscellaneous application is a procedural obligation that cannot be bypassed or deferred without consequence. Where such an application—for instance, seeking withdrawal of a revision on the basis of compromise—remains undecided, and the court proceeds to finally dispose of the main matter, it amounts to an incomplete adjudication of the issues. The Court emphasized that every lis before a court must be resolved fully and independently, and omission to pass an express order on a pending application vitiates the final judgment. In the absence of such determination, the appellate or revisional process is deemed flawed, warranting remand for fresh decision in accordance with law. Relevant part of the judgment is reproduced as under;

4. We have examined the record and have analyzed the arguments of the learned counsel. Respondent's learned counsel had not been able to controvert the fact, as to why the application of Qamar Zaman for withdrawal of civil revision was not decided at the final stage and by the learned High Court. In the trial Court as well as from the learned Appellate Court, Mst. Imtiaz Begum was granted decree in her favour, as against Qamar Zaman also, who had filed Civil Miscellaneous Application No.22 of 1996 before the learned High Court for withdrawal of revision to his extent, which was kept pending with an order to be decided at the stage of final decision of the civil revision. We have found that no order was passed upon this application in the final impugned judgment, which was too delivered in another Civil Revision No.13 of 1996 and only passing reference was made for the decision of this Civil Revision Petition No.14 of 1996, in the impugned judgment, and no independent/supportive order/decision was passed in Civil Revision No.14 of 1996.

5. Accordingly, we do not consider it a complete and full adjudication of the disputatious questions of law and facts involved in Civil Revision No.14 of 1996. So, the impugned judgment with regard to Civil Revision Petition No.14 of 1996, delivered by the learned Peshawar High Court, Abbottabad Bench is set aside and the case is remanded to the aforementioned learned High Court, considering Civil Revision No.14 of 1996 to be pending before it, with direction to decide the application Civil Miscellaneous bearing No.22 of 1996 filed by Qamar Zaman as well as the civil revision afresh after grant of opportunity of hearing to the parties to the above noted revision.

RESEARCH NOTE

The Hon'ble superior courts have consistently held that an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908, must be disposed of separately and through a reasoned order

prior to the decision of the main appeal. Deciding such an application jointly with the appeal, without independent consideration, undermines the procedural safeguards intended by the provision and deprives the applicant of a fair opportunity to have the additional evidence judicially appraised. In cases where the application is not adjudicated separately, the appropriate course is to remand the matter, treating the appeal as pending, until such application is disposed of on its own merits. As seen in the instant case, where the appellate court decided the application simultaneously with the appeal without a distinct and prior determination, the approach adopted was contrary to the settled legal principle requiring separate adjudication. This has been reaffirmed in *2008 SCMR 1259*, *2009 SCMR 326*, and *2024 CLC 1538*.