

IN THE HIGH COURT OF SINDH KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry.

Mr. Justice Mohammad Abdur Rahman

High Court Appeal No. 33 of 2022

[Nazeer Ahmed since deceased through his legal heirs v. Nazia Bibi & Another]

Petitioners : Nazeer Ahmed since deceased through legal heirs Mst. Naseem Akhtar & Others through Ms. Seema Wasim, Advocate.

Respondents : Naziz Bibi & another through Mr. Iftikhar Javaid Qazi, Advocate along with Respondent No.2.

Date of hearing : 08-08-2023

Date of Decision : 08-08-2023

ORDER

Adnan Iqbal Chaudhry J. - Application for urgent hearing is granted. By the order assailed, the learned single Judge had settle consolidated issues in competing suits while dismissing pending miscellaneous applications as 'not pressed'. The Appellant is plaintiff in one of the suits. Counsel for the Appellant submits that the appeal is only against the part of the order that records that she had 'not pressed' her applications. She submits that she had not done so; that said applications were for summoning evidence including the taking of samples for a DNA test which were crucial to the Appellant's case; and that the observation that she had not pressed such applications prevents the Appellant from summoning such evidence.

Counsel for the Respondents submits that the suit is at the stage of defendants' evidence after the Appellant had failed to adduce any evidence whatsoever and his side was closed. However, he submits that to expedite disposal of the suit, if the Appellant

moves an application in the suit for reopening his side, the Respondents will not object.

After hearing learned counsel we are of the view that any application for summoning evidence or for expert evidence was premature when the suit was not even ripe for evidence, and therefore, even if such application had not been pressed at the time of settlement of issues, that does not *per se* amount to foregoing that evidence. Therefore, in the event the side of the Appellant is reopened by the single Judge, the Appellant is not precluded from moving a fresh application for summoning the desired evidence, which of course will be dealt with on its own merits and the fact that he had not pressed a similar application prior to settlement of issues will not come in his way. With that observation this appeal is dismissed along with pending applications.

J U D G E

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