

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

R.A No.46 / 2004

Date

Order with signature of Judge

1. For orders on CMA No.2989/2008
2. For orders on CMA No.2989/2008
3. For hearing of Main Case.

16.08.2016

Mr. Khawaja Naveed Ahmed, advocate for the Applicant.
Mr. R. F. Virjee, advocate for the Respondents.

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This revision was filed by the applicants against the judgment in Civil Appeal No.53/2003 passed by the District & Sessions Judge (Central) Karachi, whereby at appellate stage the suit of the appellant was dismissed only on the question of limitation. It is conceded by both the parties before this Court that trial court judgment and decree impugned in Civil Appeal No.53/2003 was not confined to the question of limitation and the trial court beside deciding the question of limitation or maintainability has also decreed the suit on merits. Therefore, instant revision for all intent and purposes was directed against the decision only on the point of limitation. Even in the first round this revision was allowed by a judgment dated **28.01.2009** in the following terms.

“In such a situation, the finding of the appellate court in respect to the limitation is incorrect and is set aside. **There is no finding by the learned court on merit of the case and the appeal has been allowed only on the point of limitation while there is nothing on record to contest the finding given by the civil court on merit, therefore, that cannot be touched in this Revision.** Hence, this Revision is allowed and the order of the appellate court is set aside while the order of the civil court is maintained.”

2. The aforesaid order of this Court in the instant revision dated **28.1.2009** was challenged by the Respondent before the Hon’ble Supreme Court in CPLA No.126-K of 2009 and the case was remanded for decision on merits by holding that the suit was not hit by law of limitation. Since the appellate Court had not touched the merit of judgment of trial court, the applicant in this revision

application has not pleaded anything except the finding of appellate Court on point of limitation, however, in appeal the applicant has challenged the entire impugned order of trial Court. In view of the above factual position of the pleading in this Revision, unless the appellate court decides the appeal on merit after examining evidence on various issue already decided by the trial court, this court has nothing to examine and decide on merit.

3. By consent of both the parties, this revision application is allowed and case is remanded to the appellate court for hearing of civil appeal No.53/2003 for decision afresh only on merit. Both the counsel present in Court are bound to appear before District & Session Judge (Central) Karachi on Saturday i.e **27.8.2016**. If either of the two lawyers is not willing to proceed with the case of his client before trial Court, he should ensure presence of his client before trial Court on **27.8.2016** and absence of client of either of the Counsel will be treated as failure on the part of the counsel for not properly conveying message. District & Session Judge shall not issue any court motion notice and after recording attendance of the parties and their counsel on **27.8.2016** may either hear and decide the appeal then and there or give them time of one week i.e next Saturday **03.09.2006**. This appeal should be decided by District & Sessions Judge on **03.9.2016** or if any party seek date, adjournment shall be subject to cost of Rs.5000/- for not more than one week. If adjournment is sought by consent both the parties shall bear cost of Rs.5000/- each. Compliance report should reach to this Court by **10.09.2016**, through MIT-II for perusal of the Court in Chamber.

J U D G E

SM