

ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI

R.A No.238 of 2010

Date	Order with signature of Judge
------	-------------------------------

Hearing/Priority Case

1. For hearing of main case
 2. For hearing of CMA No.5227/2010
-

07.11.2016

Mr. Anwar Alam Subhani, Advocate for applicant.
Mr. Ashraf Ali Butt, and Ms. Rahmat-un-Nisa, Advocates for
Respondent No.1.

NAZAR AKBAR,J:- This Revision is directed against the order of appellate Court dated **19.7.2010** in appeal No.22 of 2008 against the order dated **09.10.2008**, whereby the appellate Court has allowed an application under Order IX Rule 9 CPC filed by the respondent against the order of dismissal of said application by VIIIth Senior Civil Judge South, Karachi, consequently the case was remanded and the order of dismissal of suit No.1611 of 2003 for non-prosecution was set aside.

2. Briefly stated that the suit was filed before this Court and after the amendment in the pecuniary jurisdiction of this Court the case was transferred to the trail Court. Firstly, the case was sent to the District and Sessions Judge South Karachi and from there the suit of the plaintiff was assigned to the Court of VIIIth Senior Civil Judge South, Karachi. The Court was required to issue court motion notice and get the service done upon the parties in accordance with the **Order V Rule 20 CPC**. Record shows that only one effort was made by the learned trial Court to serve the notice through pasting and on the basis of report of the bailiff after holding service good the suit was dismissed.

3. It is pertinent to mention here that the complete evidence has been recorded by the either sides in this Court and at the time of transfer of the case, the suit was already fixed for final arguments. When the cases are fixed for final arguments, even otherwise the courts are supposed to decide the cases on merit instead of any shortcut. In my humble view, once the parties to a civil suit have closed their side for evidence, the trial/ prosecution comes to an end. In such a situation the Court is bound to examine the evidence already available to adjudicate the matter on merit in between the parties in terms of issues already framed. This exercise was not done by the learned trial Court nor even service was properly effected before dismissing the suit.

4. The appellate Court has very clearly examined the aspect of service of court motion notice on the respondents and held that the learned trial Court has not even recorded statement of bailiff before holding service good by way of pasting. Besides that, even if service was effected through pasting, the Court was not supposed to accept the service in a situation where the counsel of the parties have not appeared. The Court should have taken one more step of service by publication before holding service good. Since the consensus of the superior courts is on the point that the cases should be decided on merits and not on technicalities and in this particular case decision on merit could have been delivered without assistance of lawyers, therefore, the appellate order was well reasoned and does not call for interference by this Court. Since the case could be decided in one hearing, the remand order is upheld.

5. In view of above discussion, this Revision Application is dismissed alongwith pending application and the remand order is maintained. However, since six years' time has already lapsed in

these proceedings both the counsel present in court are hereby directed to appear before VIIIth Senior Civil Judge South Karachi on **19th November, 2016**, on which date, if learned counsel or their representative would not be present in court, the court should impose cost and also send their names to the Bar Council for taking strict action as a misconduct on their part for not representing their clients. If the parties insist for adjournment, not more than one adjournment shall be allowed. In any case the suit should be disposed of on merit by **26th November, 2016** and compliance report be sent to this Court through MIT-II for perusal in chamber.

J U D G E

Ayaz Gul