

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

R.A No.158 of 2009

Date

Order with signature of Judge

1. For orders on CMA No.3824/2009
2. For hearing of main case.

09.11.2016

Mr. Zafar Alam Khan, Advocate for the applicant

Mr. Muhammad Yasin Azad, Advocate for the respondent No.2.

NAZAR AKBAR, J.- This litigation has started in 1985 when the applicant filed suit No.49/1985 in this Court. Then on transfer to lower Court it was renumbered as suit No.2851/1996. There is judgment on merit, however, to begin with the countdown of time of her misfortune, the learned counsel who drafted the plaint in 1985 on her behalf gave a wrong description of his client in the title of plaint and the case continued with her wrong description. In the year 2004, after 20 years an application under **Section 153 C.P.C** for correction in the description of the name of the plaintiff was filed before final disposal of suit on merit by trial Court. Though, in my humble view, such an application should have been allowed by consent but it was contested and unfortunately it was dismissed. Then no appeal was filed instantly and the learned counsel for the plaintiff/applicant waited for ultimate decision in the civil suit which according to the applicant was in his favour on merit but the suit was dismissed on account of the mis-description of the plaintiff. The applicant preferred civil appeal No.39/2006 and in the title she changed the description of original title. The appeal was also dismissed on the question of mis-description of the appellant without touching merits of the impugned order. The appellate court had no option since appeal was filed with a title which was not the title in the

judgment and decree of the trial Court. Then in 2009 with the same incorrect description, this Revision was filed.

2. Today, after hearing both the parties, learned counsel for the respondent contends that his client did not prefer an appeal against the adverse findings, since main suit has been dismissed and he had no apprehension of execution against him. Therefore, if the nomenclature of the suit is changed at this stage and only title is changed after **31 years**, this change would amount the decree in favour of the applicant, therefore, it should be treated from the point of time on which the application was dismissed in **2004**. Learned counsel for the applicant has no objection to it. This means prior to final disposal of suit. Therefore, the decision on other issues has to set aside for two reasons, firstly; the decision on other issues for the purpose of execution by now is hopelessly time barred, secondly, if it is to be treated as within time, then respondents' right of appeal against the said findings should also not be treated as terminated. The evidence has been led by both the sides, only final arguments should be advanced before the trial Court in case the suit is remanded to the trial Court for a fresh decision on merits on all the issues.

3. The applicant has filed application under **Section 153 C.P.C** which reads as follows:-

153. General power to amend.-- *The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.*

The case of the applicant was covered by the above provision of Law. But admittedly the application was filed after 20 years of filing of her suit, and by now even 12 years more have passed, therefore, to follow

the spirit of **Section 153 C.P.C** when the application is to be allowed at the stage of Revision it should be on cost.

4. In view of the above discussion, by consent of the learned counsel, this case is re-opened only for the purpose of hearing of final arguments with the correct description of the plaintiff as given by the applicant in her application. The title may be amended as it was prayed in the application filed on 14-12-2004. The case is remanded to the IIIrd Senior Civil Judge Central, Karachi, however, subject to cost of **Rs.40,000/-** to be paid by the applicant, which shall be deposited with the Nazir of District Court Central, Karachi in favour of Amin Lakhani Memorial Clinic of Karachi Bar Association. The cost of **Rs.40,000/-** should be deposited within 30 days from today and in case of non-deposit, this Revision shall be deemed to have been dismissed and the trial Court shall not proceed further. However, if the cost is deposited, the parties, present in Court, are directed to appear before the IIIrd Senior Civil Judge, Central Karachi on **10th December, 2016** for submitting comprehensive arguments. Court motion notices shall not be issued. The trial Court shall decide each and every issue afresh. In any case the suit should be disposed of on merit before the winter vacation and compliance report be sent to this Court through MIT-II for perusal in chamber.

In the above terms, this Revision is disposed alongwith pending application.

J U D G E