

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

R.A No.74 of 2012

Date

Order with signature of Judge

1. For hearing of CMA No.2363/2012
 2. For hearing of Main Case
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11.11.2015

Mr. Naseer Ahmed, advocate for the Applicants.
Mr. Muhammad Tariq, advocate for Respondent No.1.

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The applicant through this revision application has challenged order of learned Vth A.D.J (South) Karachi in Civil Appeal No.406/2010 whereby while setting aside the order of rejection of plaint in Suit No.947 of 2006 under Order VII Rule 11 CPC passed by Ist Sr. Civil Judge South Karachi the case has been remanded to the same trial Court for a decision on merits. The case of the applicant is that the Respondent filed a Civil Suit and in that suit the applicant filed an application under **Order 1 Rule 10** CPC to be joined as one of the Defendants. The application was allowed and, therefore, the Plaintiff was required to amend the plaint under **Order 1 Rule 10 (4)** CPC. The respondent accordingly amended the plaint. The applicant was aggrieved by the amended plaint and moved an application under **Order VII Rule 11** CPC, which was allowed by the trial Court on the ground that the amended plaint contained averments for which the Respondent/Plaintiff has not sought permission required under **Order VI Rule 17** CPC. On appeal, the Appellate Court after hearing both the parties came to the conclusion that the provisions of **Order VI Rule 17** CPC were not relevant for the purpose of dismissing / rejection of plaint under **Order VII Rule 11** CPC. Learned counsel for the applicants has not been able to justify that how **Order VI Rule 17** CPC was applicable to reject the amended plaint which was amended in terms of **Order 1 Rule 10 (4)** CPC and not in terms of **Order VI Rule 17** CPC. Learned Appellate Court reproduced prayers clauses from the amended and the prayer prior to amendment in plaint which on the face of it does not suggest any defect to the extent that it could attract the provision **Order VII Rule 11** CPC. The amended plaint was not barred by any law nor applicant even in his application under **Order VII Rule 11** CPC has referred to

any law to declare that the amended plaint was hit by such law. Only ground taken by the learned counsel before the trial Court and repeated before this Court was that the applicant has neither sought permission nor Court has given permission to add certain averment in the plaint after impleading the applicant as defendant. The provisions of **Order 1 Rule 10(4) CPC** and **Order VI Rule 17 CPC** operate in quite different circumstances and therefore keeping in view the facts of the case of applicant the provisions of **Order VI Rule 17 CPC** were not applicable and therefore, learned Appellate Court has rightly set aside the impugned order and remanded the case. The case law relied upon by the Counsel for applicant are dealing with circumstances in which amendment were sought in the plaint by the Plaintiff and therefore in the cited case law the provisions of **Order VI Rule 17 CPC** were applicable and the said case laws are not relevant when the plaint was amended in terms of **Order 1 Rule 10(4) CPC**. Therefore lower appellate Court has rightly found that the same was not applicable in the case of applicant.

In the above circumstances, this revision is dismissed. The applicant has already consumed three years and six months' time in this Court to comfortably defeat the observation of the lower appellate Court that the trial Court to expeditiously decide the matter on priority basis, as it was pending since 2006. Therefore, instead of imposing heavy cost, I am constrained to modify the remand order for the trial Court to decide Suit No.947/2006 by strictly following the instruction as under:-

- 1) The Court of 1st Sr. Civil Judge, South, Karachi, should decide Suit No.947/2006 within 10 months from the date of receiving of this order.
- 2) The learned counsel for the applicants and respondent present in Court are directed to appear before the Court of Ist Sr. Civil Judge South, Karachi on **24.11.2015** on which date they will also file proposed issues as the parties have already filed their respective written statements.
- 3) The trial Court, if found that any one of the party has failed to submit proposed issues, shall impose cost of Rs.500/- on the

defaulting party and frame issues on its own, even if proposed issues are not filed by the parties and cost is imposed.

- 4) The trial Court shall not adjourn the case for more than 15 days under any circumstances, and if adjournment is at request of any party, it shall always be subject to cost of Rs.500/- and in case of adjournment by consent, the cost shall be borne by both sides equally.
- 5) Any frivolous application filed by either side and it is dismissed by the Court on merit after hearing of the parties, it would be dismissed with cost of Rs.1000/- by the trial Court.
- 6) All costs imposed by the Court from time to time shall be deposited in the office of the Nazir of District & Session Judge, South, Karachi and in the final judgment, to be announced on or before **24.10.2016** shall be ordered to be transferred to the Karachi Bar Association's Library Fund.
- 7) The progress report of the proceeding shall be submitted by the learned trial Court after every two months for perusal of this Court through MIT.

JUDGE