

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

RA No.41 of 2001

Date Order with signature of Judge

For hearing of Main Case

18.04.2016

Mr. M. S. Qureshi, advocate for the applicant.
None present for the Respondent.

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This revision was filed on 14.3.2001 against the order of remand passed by the First Appellate Court in Civil Appeal No.117/2000 whereby the judgment & decree of suit No.1369/1988 in favour of respondent was set aside and the case was remanded to the trial court for recording of additional evidence of both the parties and deciding the suit afresh. The Appellate Court has also given time frame of two months only for decision after recording of additional evidence. The remand order has been challenged through this revision application.

2. Learned counsel for the applicant has failed to point out any illegality in the remand order that how the remand order was not within the jurisdiction of the Appellate Court or the Appellate Court exercised jurisdiction not vested in him. Admittedly the appellate court has also allowed to lead evidence to both the sides. Only argument advanced by counsel for applicant is that the respondent wants to file documents, which are not admissible. It is indeed unfortunate that documents which have not yet been filed or produced in evidence and the applicant wants the court to declare the said documents inadmissible without examining. Documents unless produced in evidence and unless any objection is raised, cannot be declared

inadmissible in evidence. When learned counsel was confronted with this proposition of law, learned counsel says that this case may be remanded with directions to the trial court to decide the dispute between the parties within reasonable time. It is yet another unfortunate statement after 16 years pendency of civil revision. It was total wastage of time of court and unnecessary delays in adjudication of his on merit. The appellate court in the impugned order has also given two months' time. Burden of delay is squarely on the applicant since he preferred the revision.

3. In view of the above facts, since the applicant is not in attendance, this revision is disposed of with cost of **Rs.20,000/=** The impugned order of remand to the trial court is maintained. However, the trial court after 16 years cannot decide the dispute within two months' as was directed by the trial court when parties were present in court. Therefore, before proceeding further the trial court first should have clear information through Nazir of the trial court on the court file that cost has been paid. If cost of Rs.20,000/- is not paid on or before **28.4.2016** trial court will not entertain any proceeding and this revision shall be deemed to have been dismissed. If the cost is paid court motion notices be issued to the respondent and the time given by appellate court may be extended to any reasonable time. The reason to remove time constrains from the impugned order is that originally the suit No.459/1982 was filed by the applicant on **31.1.1982**. It was renumbered, in

1985 and then in **1988**. The trial court after **36 years**, without court motion notice cannot decide the case within two months. Therefore, the trial court should be vigilant in effecting proper service on the respondents. Since the applicants are responsible for the delay at least of last sixteen years in this court, there should be no exparte order by the trial court in any casual manner to cause problem for the third parties, if any. Once service is effected and respondents appeared on court motion notice, the cost deposited by applicant be paid to the respondents.

4. With the above observations this revision is disposed. Applicant should appear before the trial court on or before 28.4.2016 subject to deposit of cost of Rs.20,000/- with the Nazir of the trial court. Compliance of this order regarding payment of cost be reported to this court through MIT-II, by the trial court.

JUDGE

SM