ORDER SHEET IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 553 / 2009 Suit No. 442 / 2013

Date Order with signature of Judge

- For hearing of CMA No.4002/2017 (U/s. 151 CPC)
- For Final Arguments

16.08.2017

Mr. Usman T. Shaikh, advocate for Plaintiff in Suit No. 553/2009 and advocate Defendant Suit No. 442 / 2013.

Mr. Nizam Baig, advocate for Plaintiff in Suit No. 442 / 2013 and advocate for in Suit No. 553 / 2009.

Syed Allay Maqbool Rizvi, AAG a/w Naheed Akhter, State Counsel.

Mr. Noor Alam, advocate for BOR.

The Plaintiff through this application for restoration of application has prayed for recalling of order dated **09.02.2017** whereby CMA No.16069/2016 was dismissed for non-prosecution. The said CMA No.16069/2016 was itself an application for reopening of the side of the Plaintiff in Suit No.553/2009 for evidence and cross-examination of the Defendant in instant suit who is Plaintiff in connected suit No.442/2013. The perusal of CMA No.16069/2016 shows that even in earlier application for reopening of the side CMA No.6300/2016 had also been dismissed on 04.8.2016 for non-prosecution. Therefore, this is probably 3rd application and in the process the Plaintiff has dragged the case without any progress for more than three years. The record shows the applicant and his counsel are guilty of absence for several years though changed counsel one after the other and on record as none of them has withdrawn his power. Therefore, there is hardly any justification for recalling the order as no plausible explanation has been offered. However, without touching the merits the Plaintiff in suit No.553/2009 is burdened with cost of Rs.100,000/- to be paid to the attorney of Plaintiff in suit No.442/2013 and Defendant in suit No.553/2009 within seven days from today and entire file of the evidence received from the Commissioner's office shall be returned to

the Commissioner namely Mr. Mansoor Ahmed Shaikh, advocate, who was appointed Commissioner in these suits by order dated 13.5.2014 in place of Mr. Kauser Ali Bukhari, whose interim report dated 01.3.2014 is on the record in evidence file. Mr. Mansoor A. Shaikh, advocate, will be paid another fee of Rs.10,000/- by the applicant/Plaintiff for cross examination of the witness whose affidavit-in-evidence was filed earlier. Cross-examination should be conducted on Saturday i.e 26.8.2017 in the consultation room at 11:00 a.m. The fee shall be paid by the Plaintiff who seeks to cross-examine the Defendant in advance. In case of failure of counsel if cross-examination of the witness is not completed on 26.8.2017 the cross will be treated as 'Nil'. However, for further evidence of other witnesses, evidence shall be recorded on every Saturday by the same Commissioner on earlier terms of his appointment and no adjournment shall be granted to either of the party, whoever will be default in filing affidavit-in-evidence or cross examination on subsequent dates will lose his right to cross-examine or lead further evidence. The Commissioner should file interim report for passing formal order for closing side against the defaulting party. All the original documents which have been exhibited by the witness in examination-inchief should be made available at the time of cross examination for other side so that they may properly cross-examine the witness.

With the above observation, listed application stand disposed of.

JUDGE