

JUDGMENT SHEET
HIGH COURT OF SINDH, KARACHI
High Court Appeal No. 369 of 2016

Present:- Mr. Justice Irfan Saadat Khan
 Mr. Justice Muhammad Humayon Khan

1. For hearing of main case
2. For hearing of CMA No.4011/16

APPELLANTS	: M/s. Grid-IT, Paksitan (Pvt.) Ltd. and another through Mr. Mirza Moazzam Baig Advocate
RESPONDENTS	: Mr. Siraj-ul-Haq (Respondent No.1) in person
DATE OF HEARING	: 23.11.2016
DATE OF JUDGMENT	: 28.11.2016

JUDGMENT

Muhammad Humayon Khan, J: This High Court Appeal under Section 15 of the Code of the Civil Procedure (Amendment) Ordinance, 1980 read with Section 3 of the Law Reforms Ordinance, 1972 is filed against the Order dated 24.10.2016 passed by the learned Single Judge in Suit No.1194 of 2004, whereby, the learned Single Judge disposed off the application for change of Commissioner (CMA No. 18780/2015) in the following terms:-

“It appears that certain objections, as to logistic support has not been provided by the commission. Notwithstanding substantial work has already been performed. Parties are cautioned to make sure that the work of the Commissioner does not suffer due to unnecessary delay. Commissioner is given 45 days to conduct process of evidence and file his finding and if any party unreasonably causing delay or

impediment for the commission, Commissioner would be free to pass appropriate orders in accordance with law.

In the above terms, the listed application stands disposed off.”

2. The facts of the case in nutshell for the disposal of this appeal are that the respondents Nos.1 and 2 filed Suit No. 1194 of 2004 on 30.09.2004 against the appellants and respondents Nos.3 to 8 for recovery of Rs.59,25,195/- and damages of Rs.25,00,000/-. In the instant suit, the appellants moved an application for appointment of Commissioner for recording evidence of the parties (CMA No. 1849/2015), which was granted by consent on 19.02.2015 and Mr. Malik Khushal Khan Advocate was appointed Commissioner for recording evidence. In pursuance of the Order of the learned Single Judge, the learned Commissioner started the proceedings for recording evidence on 18.04.2015, when the respondent No.1 filed his affidavit-in-evidence along with documents, copy whereof was supplied to the learned counsel for the appellants. On 25.04.2015, the examination-in-chief of the respondent No.1 was recorded and the matter was adjourned to 09.05.2015 for cross-examination of the respondent No.1. The respondent No.1 was cross-examined on various dates by the learned counsel for the appellants. It would appear that some unfortunate situation was created and therefore the appellants moved an application for change of Commissioner (CMA No. 18780/2015) which was strongly opposed by the respondent No.1, who filed his counter affidavit, against which, the appellants filed affidavit-in-rejoinder. The learned Single Judge by Order dated 24.10.2016 disposed of the said application in the terms already reproduced hereinabove. Against this Order, the appellants have filed this appeal.

3. We have heard the learned counsel for the appellants and the respondent No.1 in person and perused the material available on the record.

4. We have carefully gone through the said application, its supporting affidavits, counter affidavit of the respondent No.1, rejoinder of appellant No.2, comments of the learned Commissioner, diaries maintained by the learned Commissioner and the examination-in-chief and cross-examination recorded by the learned Commissioner. After considering the entire material available on the record, we have come to the conclusion that the appellants have miserably failed to establish any allegation against the learned Commissioner for the reasons that:-

- a) the said application for change of Commissioner (CMA No. 18780/2015) though is supported by the affidavits of appellant No.2 and Mr. Mirza Moazzam Baig, Advocate, but the learned counsel has failed to specifically plead any allegation against the learned Commissioner in his own affidavit. It is a settled law that if there is any allegation against the officer appointed by the Court then the learned counsel who is conducting the proceedings should file his own affidavit showing the reasons, grounds and circumstances to establish allegation against such officer, which is lacking in the instant case;
- b) the respondent No.1 filed his detailed counter affidavit duly supported by all the diary sheets maintained by the learned Commissioner and copies of examination-in-chief and the cross-examination of the respondent No.1 recorded on various dates;
- c) the learned counsel for the appellants did not file his own affidavit-in-rejoinder to rebut or controvert the contents of the counter affidavit of respondent No.1. However, the appellant No.2 filed rejoinder, which has no legal value for the simple reason that the proceedings were conducted by the learned counsel for the

appellants and therefore he should have filed his own affidavit-in-rejoinder;

- d) the learned Commissioner filed his comments, against which, again the learned counsel for the appellants did not file his own counter affidavit to rebut or controvert the contents of the said comments;
- e) the diary sheets maintained by the learned Commissioner clearly show that he has conducted the proceedings in accordance with law by properly maintaining the diary sheet of every hearing;
- f) the learned Commissioner has in a proper manner recorded the examination-in-chief as well as cross-examination of the respondent No.1;
- g) under Article 129 (e) of the Qanun-e-Shahadat, the Court may presume that judicial and official acts have been regularly performed. To rebut this presumption, the appellants were required to give cogent reasons and grounds duly supported by the affidavit of the learned counsel for the appellants, who conducted the proceedings. Since the appellants have miserably failed to bring on record any cogent reason or ground duly supported by the affidavit of their counsel, the presumption is not rebutted.

5. In these circumstances, we have come to the conclusion that the appellants have miserably failed to make out any case for change of Commissioner at this stage and the said application was filed with ulterior motive to unnecessarily delay the proceedings.

6. We have carefully gone through the impugned Order of the learned Single Judge and again have come to the conclusion that the learned Single Judge has rightly decided the said applications in accordance with law and the said Order does not require any interference in appeal.

7. In view of the above discussion, this appeal alongwith listed application is dismissed with cost of Rs.25,000/- which should be paid by the appellants to the High Court dispensary fund Karachi and receipt whereof should be deposited in the file of instant suit within (7) seven days from the date of this Judgment and the Order dated 24.10.2016 of the learned Single Judge is upheld. The parties in this appeal are directed to appear before the learned Commissioner on 03.12.2016 at 3:30 P.M. in his office for further proceedings. The learned Commissioner is directed to conclude the proceedings for recording cross-examination of the respondent No.1 on or before 31.12.2016 and submit his report in the instant suit positively. The learned Commissioner is further directed to refuse adjournment on any unreasonable ground and in case if any party try to delay or avoid the proceedings, the learned Commissioner should pass appropriate order in accordance with law and submit the same alongwith his report in the instant suit. Office is directed to send copy of the Judgment to learned Commissioner immediately for compliance.

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