

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.203 of 1990

Date	Order with signature of Judge
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For Arguments _____

13.03.2018

None present for the plaintiff.
Mr. Arif Khan, advocate for defendant No.1.
Mr. Ghulam Murtaza, advocate for defendant No.2

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1. The plaintiff M/s. Water and Power Development Authority (WAPDA) has filed this suit on **23.2.1990** as short cause suit under **Rule 22(5)** of the SCCR against M/s. National Insurance Corporation for recovery of a sum of **Rs.13,559,999/-** with markup. The previty of contract between plaintiff and defendant No1 was said to be a performance / guarantee bond executed by defendant No.1 dated **26.12.1986** for the said sum on behalf of M/s. National Construction Company (Pakistan) Limited. Defendant No.1 once served denied claim of the plaintiff and filed an application for impleading the National Construction Company (Pakistan) Limited., as one of the necessary party. The application was allowed and M/s. National Construction Company was also impleaded and they have also filed their written statement on **04.6.1990** and denied claim of the plaintiffs as liability on various grounds.

2. On **12.04.1992** following consent issues were adopted by the Court.

- i. Whether the Performance Bond is an unconditional document?
- ii. Whether NCC defaulted and failed to perform the contract?
- iii. Whether the Defendant NIC neglected and failed to make payment under the bond to the Plaintiff?
- iii-a What is the liability of third party?

iv. What should the order be?

3. Evidence was recorded through the Commissioner. Since then the plaintiffs have been running away and never seriously contested the case. The record shows that their last lawyer Mr. Kamran Shahzad Siddiqui, advocate filed power on **30.3.2016**. His last appearance was on **17.8.2016** and after more than one year came again on **17.1.2018**. During the intervening period either none was present for the plaintiff or brief was held by Mr. Sheeraz Ahmed, advocate. Again on **13.2.2018** brief was held on his behalf. Today none is present for the plaintiff. This is 28 years old case and even otherwise hearing is not mandatory as sufficient opportunities were given to the counsel for the plaintiff. I find strength from the following passage from the judgment of Hon'ble Supreme Court in the case of Messrs MEMY INDUSTRIES LTD., and others ..VS.. FEDERATION OF PAKISTAN through Ministry of Commerce and others reported in **2015 SCMR 1550**.

After recording of evidence, is supposed to pronounce the judgment per order XX R 1(2), which reads; "the Court shall, after the case has been heard, pronounced judgment in open court, either at once or on same future day not exceeding thirty days, which due notice shall be given to the parties or their advocates". The judgment thus has to be given by the trial Court within the prescribed period of 30 days, after the hearing of the case has been concluded. It may be relevant to mention here that with the commencement of the trial in a civil lis, the hearing of the case also starts. And with the conclusion of trial, the hearing also concludes. The conclusion of the trial or the hearing means that the parties have concluded and completed their evidence. There is no specific provision in the CPC, which confers the right upon the parties to make oral arguments before the trial Court, but per convention, the oral submissions of the parties are also heard, which exercise, however, must be concluded within 30 days' time from the conclusion of the trial, as prescribed by law. If the parties, despite the opportunity granted by the court to make oral submissions, do not avail the same, the court is not bound to wait indefinitely for them and keep on adjourning the matter. This is highly deprecated and should be discouraged, rather the court should pronounce the judgment without their arguments and this (*such judgment*) shall not be in violation of the rules of hearing.

4. I have heard learned counsel for defendants No.1 & 2 and examined the evidence. My finding on the all the issues with reasons is as under.

Issues i to iv.

5. Unfortunately, it is a case of just no evidence since the plaintiff witness Mr. Sikander Feroz, in examination-in-chief has failed to exhibit / produce the documents filed alongwith plaint. He could not file even photocopies of the annexures including the Performance Bond executed by defendant No.1 as guarantor on behalf of defendant No.2. Since the plaintiff has failed to show terms and conditions of relevant binding contract how can its breach be proved to claim huge amount from the defendants. The Court cannot decree the suit merely on oral statement on oath by one witness of the plaintiff. The burden of proof of all the issues was on the plaintiff. The plaintiff has failed to discharge the same, therefore, all the issues are decided against the plaintiff.

Issue No.v

In view of the awful state of evidence discussed above, the suit is dismissed.

JUDGE

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