

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 319 of 1996

Date	Order with signature of Judge
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Plaintiff	:	Mst. Shahnaz Hanif, Through M/s. Muhammad Ehsan, & Abdul Qadir, advocates.
Defendant No.1	:	City District Government Karachi. Through Mr. Sameer Ghazanfer, advocate.
Defendant No.2	:	Ahmed Masood Khan (Nemo)
Defendant No.3	:	Karachi Building Control Authority, (Nemo)
Date of hearing	:	07.12.2017
Decided on	:	07.12.2017

Nazar Akbar.J,- This suit was filed on 15.1.1996 by one Shahnaz Hanif through her attorney Shakir Sakrani and the most precise facts of the case are that the plaintiff resident of Dubai owns a home constructed on Plot No.Com-11/A, Block No.3, Scheme No.5, Kehkashan, Clifton, Karachi and as alleged one wall of her house was broken or demolished by KMC. Such demolition has caused serious mental torture to the plaintiff, therefore, she filed a suit for recovery of Rs.15,00,000/- which includes financial loss of Rs.5,00,000/- and loss on account of mental torture, agony amounting to Rs.10,00,000/=. The defendant has categorically denied in written statement that they have demolished wall or any construction on the plot of the plaintiff.

Proposed issues filed by the plaintiff were adopted by this Court on **19.1.1998**, which are as follow:-

1. Whether on 14th April, 1996 the defendant No.2 demolished a portion of the Plaintiff's Building in suit?
2. Whether the act of the defendant No.2 was illegal?

3. Whether on account of act of defendant No.2 the plaintiff suffered loss. If yes, of what amount?
4. Whether the plaintiff suffered any mental agony on account of the act of Defendant No.2, If yes, to what damages the Plaintiff is entitled to?
5. Whether the defendants are jointly and / or severally liable for the claim of the Plaintiff in suit?
6. What should the decree be?

My findings on the issues are as follows:-

The burdened of proof of damages caused to the plaintiff by the defendant was obviously on the plaintiff. The plaintiff herself never turned up for leading evidence. The suit was filed through attorney Mr.Sakrani. However, after 10 years at the evidence in 2006 another attorney came whose evidence was recorded as Exh.4 and he was cross-examined. The first thing that learned counsel was explain the status of the attorney whose evidence was recorded as sole witness of the plaintiff come in the witness box. In the opening line of the examination-in-chief, the attorney of the plaintiff as her witness, has stated that I have filed photocopies of the following documents. It include power of attorney, which is exhibited as Exh.4/1. He has not shown or produced original power of attorney at the time of his evidence.

Therefore, before hearing of the arguments on 4.12.2017, learned counsel for the plaintiff was directed to call the attorney in Court for the plaintiff was directed to call the attorney in Court with original power of attorney. The attorney on next day informed that the original is missing. The examination of photocopy of power of attorney (Ex.4/A) clearly shows that it does not bear signature of the plaintiff on the first two pages. The contents of general power of attorney is only on these two pages. Nothing is mentioned on the 3rd page which bears signatures of different person. The pages of the document are not numbered and none

of the page refers to the previous page as continuation sheet to earlier page of power of attorney. There is one more page which carries photocopies of NIC of the plaintiff and attorney, and others and strangely enough it is not even formally stamped by a notary public to be treated as part and parcel of the so called power of attorney. On the face of it, evidence of such an attorney is no evidence in the eyes of law. The attorney himself was not witness of demolition. The plaintiff has not produced any eye witnesses from the locality or any other to testify that defendants have demolished the construction on the plot of the plaintiff. The plaintiff who was in Dubai could not have suffered any mental torture on account of alleged incident of **01.01.1996**, learned counsel for the plaintiff has read para-9 of the affidavit of attorney that the principal (Mrs. Shahnaz Hanif) had to rush to Pakistan. But unfortunately the attorney has not mentioned that dates on which she reached Karachi and whether she came by air or by road. Even total expenses in travelling have not been mentioned in the plaint and / or evidence. The Court, in view of such evidence is helpless to calculate the damages, if at all, suffered by the plaintiff. Consequently all the issues are decided against the plaintiff. Therefore, the suit is dismissed.

JUDGE

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