

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
IInd Appeal No.146 of 2010

Date	Order with signature of Judge
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Present: Mr. Justice Nazar Akbar

Appellant : **Jarrar Ahmed Shaikh
through Ch. Abdul Rasheed, advocate.**

Respondent : **The Karachi Electricity Supply
Corporation, through Mr. Abdullah,
Advocate.**

Date of hearing : **27.11.2018**

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JUDGMENT

Nazar Akbar.J.- This IInd appeal is directed against the order dated **02.11.2010** whereby judgment dated 28.2.2004 and decree dated 13.3.2004 passed in Suit **No.439/2002** was set aside and matter was remanded to trial Court for deciding the same according to law. The operative part of the order impugned is as follows:-

It may be observed that here in present case the dispute regarding supplementary / detection / bill and connected load is still unresolved due to non-appraisal of evidence so also un-sufficient evidence therefore, in such a situation impugned judgment is set aside and suit is remanded back to the court below with direction to examine electric inspector and to provide an opportunity for production of documents which were requested through an application dated 28.02.2004 and thereafter controversy of parties be decided according to law.

2. It may be observed that appellate Court passed the above order in view of the fact that on **28.2.2004** an application was filed by the respondent / defendant in the trial Court to produce additional evidence / documents in the suit. The said documents came to the knowledge / notice of the respondent only on

26.2.2004. The learned trial Court on the same day dismissed the said application without even notice to the plaintiff in the following terms.

ORDER

Heard. The record of the case shows that today the case is fixed for final arguments and this application filed by the defendant at belated stage and the computer report is not signed or attested by the competent person.

Sd/-
28.2.2004

The learned trial Court on same day heard arguments and passed a comprehensive order of 28 typed pages and decreed the suit as prayed with no order as to costs. I cannot comment on the high caliber and excellence of the learned Presiding Officer of trial Court who beside deciding an application handled all other cases before her not only completed hearing to both the counsel and dictated a judgment of 28 typed pages.

3. Be that as it may, in appeal the respondent impugned the final judgment and also relied on the adverse effect of the order dated **28.2.2004** on the application which was dismissed by above quoted short order without notice to the other side and that order was the main ground of appeal. It is reproduced below:-

6. That the learned trial Court has erred in passing judgment and decree in favour of respondent as the trial court has not appreciated the documentary evidence on record that respondent had submitted a "Work Commencement Report" before Electric Inspector through Sarfaraz Electric and Decorator shop, Block 223/30, F.B. Area, Karachi. On 30.10.2013, stating therein that presently he was consuming 80 KW load, but now he wants to Reduction from his connected load. The appellant filed an application under Section 151 CPC, alongwith those documents which were marked as Ann. "A" to "E", on 28.2.2004. Indeed these documents were very essential which were not submitted earlier

because neither the same were in the possession of billing department nor billing department was aware of this fact that respondent has initiated any proceeding before the Electric Inspector Government of Sindh, nor this fact was disclosed by the respondent to the appellant that he has already filed proceeding for Reduction of excess load which he has been illegally unauthorisedly but he has not been regularized by the competent authority, hence liable to be set aside. (p.s. copies of said documents filed and marked as Ann, "A" to "E", respectively).

4. The record shows that the request of the respondent for taking on record documents by means of additional evidence has been dismissed by the trial Court without application of mind. There is no limitation for filing application for placing the documents on record or an application for additional evidence particularly when such documents came to the notice / knowledge of the respondent only two days before making such an application and after recording of their evidence. The only ground for dismissal of the said application was that "*it was filed at belated stage when case was fixed for final arguments*" was not proper application of mind to the facts and law. It is further revealed from the impugned judgment that none examination of such documents has adversely effected the result of the final decision of trial Court. **Section 105** of CPC takes care of a situation like the one in hand. An order on interlocutory application not appealed or could not be challenged on account of passing of final order, can be impugned / challenged alongwith appeal against the final order.

Section 105 CPC

105. Other orders. (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a court in the exercise of its original or appellate jurisdiction, but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an

order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

5. The appellant has challenged the order of dismissal of an application and therefore, the Appellate court has been pleased to remand suit to the trial Court. The appellate has examined several documents which were supposed to come on record alongwith the said application filed on 28.2.2004 and therefore, the conclusion of the first appellate Court that dismissal of the said application without notice to the respondent was unlawful and such illegality has been reflected in the final order.

6. This appeal was dismissed by short order dated **27.11.2018** and the order passed by the appellate Court was maintained. These are the reasons for the short order.

JUDGE

SM