

IN THE HIGH COURT OF SINDH AT KARACHI

**IInd Appeal No.115 of 2016**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Appellant : The Pakistan Reinsurance Company Ltd.,  
Through Mr. Sikandar Khan, advocate.

**Versus**

Respondent No.1 : M/S Sachal Associates, through  
Mr. Muhammad Amin Motiwala, advocate.

Respondent No.2 : The Ministry of Commerce, Govt. of Pakistan,  
Through the Sector Officer. (Nemo).

Date of hearing : **24.04.2019**

Date of Decision : **13.05.2019**

**JUDGEMENT**

**NAZAR AKBAR, J.** The appellant through this IInd Appeal has challenged the concurrent findings. The III-Senior Civil Judge, West Karachi by judgment dated **22.01.2016** decreed Civil Suit No.43/2011 filed by respondent No.1. The IX-Additional District Judge, West Karachi by judgment dated **31.08.2016** passed in Civil Appeal No.13/2016 maintained the said findings of trial Court.

2. Briefly stated the facts of the case are that Respondent No.1 filed civil suit No.43/2011 against the appellant and Respondent No.2 for the recovery of service/ agency charges amounting to Rs.7,29,125/- together with the compensation and damages of Rs.15,00,000/- at bank rate interest, stating therein that he has been running an organization/concern operating meticulous business at Karachi as Dealers, Commission Agents, Settlers and

Estate Brokers in all property matters and the appellant is a limited Insurance Company which was perhaps formulated by virtue of Memorandum of Association and Byelaws as contemplated under the Companies Act. The appellant had appointed Respondent No.1 as its agent in terms of **Section 186** of the Contract Act, 1872 to deal and procure tenement for commercial purpose in PIC towers. Due to satisfactory accomplishment of the job by Respondent No.1, M/s Union Bank Limited, New Jubilee Insurance House, I.I Chundrigar Road, Karachi had invariably and indefensibly agreed to obtain approximately 29.165 sq. feet of commercial space in PIC Towers, Lalazar Karachi from the appellant as their tenant in consideration of payment of monthly rent @ Rs.25/- per sq. yds for the smooth fulfillment of the transaction. The appellant was thus obliged to pay Rs.7,29,125/- without exception as service charges equaling to one-month rent to Respondent No.1 as per market practice. A bill of service charges was delivered to the appellant but they did not honor their commitment. On the contrary M/s Union Bank paid services charges of their part to Respondent No.1 for successful accomplishment of job of acquiring the premises to the appellant, therefore, Respondent No.1 filed the said suit before the trial Court.

3. Appellant/defendant filed written statement wherein they denied the allegations and raised the legal objection that the suit is not maintainable due to non-joinder of necessary party viz Union Bank. He further contended that he approached the tenant directly and Respondent No.1 did not complete the task and the deal was finalized without their intervention.

4. The trial from pleading of the parties framed the following issues:-

1. *Whether the suit is not maintainable being time barred, no cause of action and bad for non-joinder of necessary party i.e Union Bank?*
2. *Whether any agreement between the plaintiff and defendant No.1 regarding the commission or brokerage of service charges executed?*
3. *Whether defendant No.1 hired services of plaintiff for letting out the space in the building of Defendant No.1 without any commission or on commission at market rate?*
4. *Whether the Plaintiff contacted M/s Union Bank to obtain subject space of Defendant No.1 on rent and M/s Union Bank obtained subject space of Defendant No.1? If yes, at what rate?*
5. *Whether the role of plaintiff between the deal of defendant No.1 and M/s Union Bank remained till finalization of deal?*
6. *Whether the plaintiff is entitled for relief prayed?*
7. *What should the decree be?*

5. The trial Court after recording evidence and hearing the parties decreed the suit in favour of Respondent No.1/ plaintiff by judgment dated **22.01.2016**. The appellant/defendant No.1 filed Civil Appeal No.13/2016 against the judgment before IX-Additional District Judge, West Karachi which was dismissed by judgment dated **31.08.2016**, however, the decree of the trial Court was modified in the following terms:-

*As a result of the discussion made hereinabove the instant appeal is dismissed. However the decree is modified to the extent of Rs.7,29,125 and Rs.50,000/- as cost of the suit to be recovered from the Appellant.*

The appellant filed instant IInd Appeal against both the judgments of the trial Court as well as the Appellate Court.

6. I have heard learned counsel for the parties and perused the record.

7. Learned counsel for the appellant has merely repeated his stance which was before the trial Court and in this Court that Respondent No.1 was supposed to implead M/S Union Bank Limited to whom he has allegedly introduced as a proposed client to obtain the office premises of the appellant and, therefore, he is not entitled to the brokerage of oral agreement between the parties. He has also contended that the suit filed by Respondent No.1 was time barred. However, after going through the record and the impugned judgments he was unable to point that how brokerage could be denied when admittedly the deal has been struck between the appellant and Union Bank Limited and such deal has taken place on **01.06.2005** and the suit has been filed in **2006** i.e within three years of the date of termination of cause action. The record in hands clearly states that M/S Union Bank Limited after entering into the deal with the appellant through Respondent No.1 has already paid his part of brokerage and it has also come on the record. The precise dispute between the parties was whether the appellant has utilized services of Respondent No.1 as an agent for hiring/ letting out the premises owned by them to M/S Union Bank Limited. The trial Court and the appellate Court have thoroughly referred to the evidence which is unshaken. The appellate Court has even been considerate in modifying the decree passed by the trial Court whereby the interest at the rate of 6% per annum has been dropped by the appellate Court. The appellant has not been able to point any legal flaw in the judgments and decrees of the two Courts below in terms of Section 100 of the CPC.

8. In view of the above facts and circumstances, since there is no legal infirmity in the impugned judgments and on merit no case is

made out for interference in the impugned judgments by this Court, therefore, instant IInd Appeal is dismissed with no order as to costs.

JUDGE

Karachi Dated:13.05.2019

Ayaz Gul