

**ORDER SHEET**  
**HIGH COURT OF SINDH, KARACHI**

---

HCA No. 226 of 2017

Date	Order with signature of Judge
------	-------------------------------

**Present**

**Mr. Justice Muhammad Ali Mazhar.**

**Mr. Justice Adnan Iqbal Chaudhry.**

Asim Butt.....Appellant

Versus

Zariq Pervez & others.....Respondents

**Date of hearing 26.09.2018**

Mr. Muhammad Ali Jan advocate for the appellant.

Ch. Abdul Rashid advocate for the respondent No.1.

None present for the respondent No. 2 to 4.

\*\*\*\*\*

**Muhammad Ali Mazhar, J:** The appellant has challenged the order dated 01.03.2017 whereby his application CMA No.6704/2016 was dismissed by the learned Single Judge in Suit No. 50 of 2010. In fact this application was moved with the request that order dated 01.04.2014 may be recalled and defendant No.3 (appellant) may be allowed to cross examine the plaintiff and lead his evidence. The commissioner was appointed in Suit No.50/2010 to record evidence on 16.01.2013, however, no powers were given to the commissioner to close the side which fact has not been denied by the learned counsel for the respondent No.1. However, on 01.04.2014 the commissioner report dated 27.03.2014 was fixed for orders when Ch. Abdul Rashid

learned counsel for the plaintiff was present and on that date the commissioner report was simply taken on record. When the application was filed for recalling the order, the learned Single Judge in the impugned order while mentioning the report of the commissioner further observed that order of closing the side was passed by the court on 01.04.2014 which is virtually not a correct position as on that date no order was passed by the court for closing the side of the appellant.

2. Learned counsel for the respondent No.1 submits that the plaintiff is alive but his witness Muhammad Saeed has expired. Learned counsel for the appellant further submits that delay was caused in conducting the cross examination mainly for the reasons that learned counsel for the appellant was elevated to the bench and this fact was also conveyed to the commissioner.

3. We have gone through the commissioner's report and the impugned order. Though the side was not closed by the court but it is also a fact that numerous opportunities were availed by the appellant but he failed to lead evidence or cross examine the plaintiff's witness. After arguing at some length, learned counsel for the appellant requests that one opportunity may be given to the appellant to cross examine the plaintiff and lead his own evidence. He further undertakes that no undue and unnecessary adjournment will be sought by the appellant and in one month's period he will not only cross examine the plaintiff but also adduce his evidence. Learned counsel for the respondent No.1 has no objection,

however, he submits that some cost may be imposed on the appellant for causing such undue delay.

4. In view of the above, this appeal is disposed of with the order that the appellant is allowed to cross examine the plaintiff as well as lead his own evidence within a period of one month without any delay. He will also file affidavit in evidence of the appellant before the same learned commissioner. This order will be subject to payment of cost of Rs. 25000/- (rupees twenty five thousand) to the Sindh High Court Bar Library within one week. The appellant will submit copy of receipt showing payment of cost to the commissioner failing which he will not be allowed to lead evidence. If the appellant will fail to complete the evidence within a period of one month, this time the commissioner is allowed to close the side and submit the report in the trial court. The same commissioner is appointed for further proceedings in this case. The appellant will also pay fee to the commissioner per witness as already fixed earlier by the learned single Judge in the order of appointment of commissioner.

JUDGE

JUDGE