

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Ind Appeal No.71 of 2018

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

Hearing case (Priority)

1. For orders on CMA No.5544/2018
2. For hearing of main case.

17.10.2018

Mr. Ovais Hameed Baloch, advocate for the applicant.

Learned counsel for the applicant is trying to press that there are certain forged documents prepared by the respondent and since the documents are forged, therefore, the order of remand was illegal.

He has challenged the following order:-

In the light of above and circumstances, I am of the view that the appellant/plaintiff has made out a case for interfering with the impugned Order dated 14.2.2017 passed by the learned XIth Senior Civil Judge, Karachi Central in Civil Suit No.530/2013 therefore I hereby allow this appeal and set aside the impugned order dated 14.2.2017 and remand the case to the trial Court with direction to decide the matter afresh after recording evidence of both parties and hearing both parties, on merits.

It is settled principle of law that when there are conflicting findings of the two Courts, the finding of the appellant Court is to be given preference. I have gone through the impugned order which clearly permits that parties should contest the case on merit since question of limitation is always question of facts and law and the appellate Court has examined the litigation between the parties on the basis of which it has been concluded that may be the proceedings of rent case between the applicant and the respondent should have been examined while calculating the period of limitation. However, without going into the detail or making any comment on the question

of evidence on limitation, the trial Court seized of suit No.530/2013 is directed that if any question of limitation has been raised and evidence is produced by the parties, the question of limitation can still be decided afresh after recording evidence and decide the suit on all the issues between the parties without being influenced by any observation of appellate Court. The other aspect of this second appeal is that no question of law has been agitated as required under Section 100 CPC for remanding the order of appellate Court.

With the above observation, this IInd Appeal is disposed of alongwith pending application(s). Trial Court is directed to decide the suit No.530/2013 on merit within six months from the date of receiving of this order.

JUDGE

*Ayaz Gul/PA**