

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

First Appeal No.72 of 2017

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

Present

**Mr. Justice Muhammad Ali Mazhar
Mr. Justice Yousuf Ali Sayeed**

Mst. Parveen Akhtar
Versus
Khadam Hussain Phal

Dated: 11.03.2020

Mr. Dilawar Hussain Khattana for appellant.

Mr. Ghulam Akbar Panhyar along with Mr. Kamran Khan Memon for respondent.

-.-.-

Muhammad Ali Mazhar, J.- The Appellant has challenged the Judgment dated 18.09.2012 and Decree dated 25.10.2012 passed by V-Additional District Judge Karachi South in Summary Suit No.38 of 2010 filed by the Appellant/Plaintiff under Order XXXVII CPC for recovery of Rs.17,50,000/- as against the Respondent/Defendant, which was dismissed under order XVII Rule 3 CPC for want of evidence.

In paragraph 3 of the impugned Judgment, learned trial Court held as under:-

“2. Later on, issues were settled by this Court on 15.02.2012 and matter was kept for evidence of the plaintiff’s side. The record reflects that at the first instance took numerous adjournment for filing her affidavit-in-evidence viz 10.3.2012, 31.3.2012, 18.04.2012, 18.4.2012, 03.5.2012 and finally on 18.5.2012 filed her affidavit-in-evidence. Thereafter, the matter again kept for cross-examination of the plaintiff and it was being adjourned on 29.5.2012, 05.7.2012, 18.7.2012, 02.08.2012, 23.08.2012, 05.9.2012 and 13.9.2012 when particularly, last chance was provided and matter was already fixed at 11.00 a.m. Today, again the plaintiff is called absent, however, the learned counsel for the plaintiff is present

and moved adjournment application on the ground that she has some personal family work. It is pertinent to mention here that on none of the aforesaid date, the plaintiff made her presence when the matter was kept for her cross-examination. On the last date of hearing, specific direction was given to the plaintiff's side for leading cross-examination today at 11.00 a.m. as the matter is old one pertaining to the year 2010. In the above circumstances, I find no merits in the adjournment application, stands rejected."

Learned counsel for the Appellant argued that the learned trial Court had wrongly portrayed the relevant diaries, in as much as the adjournment of the matter on those given dates were not all attributable to the Appellant. He referred to the certified copy of the diary sheets and pointed out that several adjournments were sought by the Respondent and on some dates the Presiding Officer of the Court was on leave. He contended that, nonetheless, the blame for the perceived delay was placed entirely on the Plaintiff and the Suit was dismissed, which, per learned counsel, had resulted in a grave miscarriage of justice.

On the other hand, learned counsel for the Respondent argued that the Appellant had also applied for various adjournments, due to which the trial Court was left with no option except to dismiss the suit. He further argued that an adjournment could not be claimed as of right and the trial Court had the discretion to grant or refuse the request made in that regard. In support of his submissions, he placed reliance on the the case of Zahoor v. Election Tribunal, Vehari & others (2008 SCMR 322).

We have examined the relevant diary sheets, as mentioned in the impugned Judgment. Many of the dates mentioned are those on which the Appellant failed to file an affidavit-in-evidence. However, it is clearly mentioned that on 18.05.2012 the affidavit-in-evidence was then filed, hence for all intents and purposes it is the subsequent dates when the matter was fixed in Court that are of consequence. The first such date was 29.05.2012, and the diary sheet shows that it was the Respondent who filed an application for adjournment, with the matter being adjourned to 05.07.2012. Again, the diary sheet of 05.07.2012 reflects that the Respondents counsel filed an application for

adjournment and matter was put off to 18.07.2012. On that date the diary sheet reflects that the Presiding Officer was on leave and the matter was adjourned to 02.08.2012. Again on 02.08.2012, the Presiding Officer was on ex-Pakistan leave and the matter was adjourned to 18.08.2012. However, the diary sheet of dated 23.08.2012 shows that 18.08.2012 was declared a public holiday. The diary sheet dated 05.09.2012 then in turn shows that the advocates for the parties were present and in the interest of justice the matter was adjourned to 13.09.2012 for cross-examination of the Appellant. Even in this diary sheet it was not mentioned whether the Appellant was present in Court for cross-examination or not. The diary of 13.09.2012 also reads similarly, except for further recording that in the interest of justice the matter was adjourned to 18.09.2012 for cross-examination as last chance, and finally on 18.09.2012 when the counsel for the Appellant filed an application for adjournment, the suit of the plaintiff was dismissed for want of evidence.

In our understanding it is apparent from the record that after filing of the affidavit-in-evidence of the Appellant, only the last two diary sheets reflect any prospect of an evidentiary proceeding, and the narration of the proceedings over the dates mentioned in as per paragraph 3 of the impugned Judgment does not reconcile with the certified copies of the diary sheets, which shows that on one date a last chance was given and on the next date the suit was dismissed.

As a result, the impugned Judgment and Decree are set aside and the matter is remanded to the trial Court with the direction to proceed with the case on merit in accordance with law and the Appellant is also cautioned to ensure her presence for purpose of cross-examination on all relevant dates without any excuse or further request for adjournment. The Appeal stands disposed of in the above terms.

Judge

Judge