

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P.No.D-839 of 2019

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Date                      Order with signature of Judge  
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**Before:-**  
**Mr.Justice Muhammad Ali Mazhar**  
**Mr.Justice Yousuf Ali Sayeed**

**Muhammad Asif.....Petitioner**

V/s

**M/s.Gigi Industries Private Ltd.**  
**& others.. .....Respondents**

**18-08-2020**

Mr.Arshad Jamal Siddiqui, Advocate for the Petitioner.  
Petitioner is also present.  
Mr.Shaharyar Mahar, Assistant Advocate General.

None present for the respondent Nos.1 and 2.

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**Muhammad Ali Mazhar, J:** Since nobody is appearing for the respondent Nos.1 and 2, learned counsel for the petitioner had filed application under Order 5 Rule 20 CPC for substituted service, which was allowed vide order dated 29.1.2020. The newspaper dated 23.02.2020 is available on record to show that substituted service has been effected.

2. We called the matter twice, but nobody appeared for the respondent Nos.1 and 2, whereas to represent respondent Nos. 3 and 4 learned Assistant Advocate General is present in court. The petitioner has challenged the order dated 20.11.2018 passed in Civil Revision No.72/2018 (learned counsel for the petitioner submit that in fact it is Civil Revision No.72/2017, but wrongly typed as 72/2018) passed by learned IVth Additional Sessions Judge, Karachi Central. Learned counsel for the petitioner argued that the suit was decreed exparte,

thereafter, an Application under 12(2) CPC was filed which was dismissed, thereafter, the respondent Nos.1 and 2 challenged the order in Civil Revision. The revisional court concluded as under:-

“It is found that the service of summons was not properly effected upon the applicants/defendants and he had further asserted that in the undertaking which was filed by one counsel namely Abdul Khan and it had been agitated by the applicants that in his Affidavit-in-Evidence that the said undertaking was managed by the respondent/plaintiff which had not been rebutted by the respondent/plaintiff, hence, same stands admitted.

Keeping in view the above facts and circumstances I find that the impugned order is liable to be set aside. Consequently the impugned order dated 09.08.2017 is hereby set aside. In result thereof the application under Section 12(2) CPC stands allowed whereby the judgment and decree dated 30.04.2014 is hereby set aside as it was obtained by misrepresentation. The applicants/defendant is directed to file Written Statement before the learned trial Court where after the learned trial Court after settling the issues, record the evidence of the parties and decide the matter on its merits within the shortest possible time, hence, the instant Civil Revision Application of the applicant is allowed, with no order as to costs. Let the copy of this order be sent to the learned trial Court for information and compliance.”

3. Learned counsel for the petitioner argued that after remanding the matter by the revisional court to the trial court the respondent Nos.1 and 2 have already filed their written statement and the trial court has also framed issues. In the revisional order it was held that service was not properly effected upon the defendants, the revisional court remanded back the matter to the trial court with certain directions. At this juncture, learned counsel for the petitioner argued that initially the matter was being tried by Vth Senior Civil Judge, Karachi

Central, but on the basis of an administrative order it was transferred to the learned First Senior Civil Judge, Karachi Central.

4. We find no illegality in the order as an ex-parte order was passed without proper service of summons. Since issues have already been framed, therefore, in order to avoid technical knockout, the trial court is directed to record the evidence and decide the matter on merits within a period of 04 months. The proceedings must be expedited as the suit is already pending since 2013. Petition is disposed of.

Office is directed to transmit copy of this order to the learned trial court for compliance.

Judge

Judge

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