ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI C.P. No.D-866/2020

Date Order with Signature(s) of Judge(s)

Present

Mr. Justice Muhammad Ali Mazhar. Mr. Justice Arshad Hussain Khan.

Zakariya..... Petitioner

Versus

Khalid Khan and others...... Respondents

Date of hearing, 17.11.2020

Mr. M. Mushtaq Qadri, Advocate for the Petitioner

Mr. Zia Ahmed Awan, Advocate for the Respondent No.1

Respondent No.1 is also present

Muhammad Ali Mazhar, J:. The petitioner raised plea in his petition that due to improper service he could not appear to contest Civil Suit No.139 of 2018 before the learned Trial Court which was decreed ex-parte. Thereafter petitioner had filed application under Section 12(2), CPC which was also dismissed. He insists that the ex-parte order was passed without service upon him. According to him the execution proceedings have been transferred to competent Court at Quetta, Balochistan and he came to know about the pendency of the same when notice was issued by the executing Court. Learned counsel for the petitioner requests that the petitioner may be allowed to defend the suit so that he may file the written statement. He submits that some directions may also be issued to the learned trial Court to decide the suit within a reasonable period of time. Learned counsel for the petitioner agrees to furnish security/surety equivalent to decretal amount subject to the satisfaction of Nazir of the learned Trial Court within a week's time and in the next two weeks' time the petitioner will file written statement with advance copy to the respondent No.1 / plaintiff. The learned counsel for the respondent No.1 has no objection if the petitioner will contest the suit on merits after furnishing security in the trial Court.

By consent of both the learned counsel the impugned Judgment dated 02.10.2020 passed in Civil Suit No.139 of 2018 and Order dated 05.12.2019 passed in Civil Revision No.78 of 2019 are set aside. The petitioner shall furnish security equivalent to the decretal amount with Nazir of the trial Court within seven working days and file the written statement within two weeks. Learned trial Court shall expedite the proceedings and preferably decide the suit within six months' time on merits. After this consent order, the execution proceedings have become infructuous. By consent it is further agreed that if the petitioner will fail to furnish security within a period of seven working days the original judgment and decree will be resurrected and executing Court may execute the decree in accordance with law.

The petition is disposed of in above terms alongwith pending application.

JUDGE

JUDGE

MUSHARRAF ALI, P/A