

IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No.226 of 2005

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Applicant : Al-Jamiat-ul-Isam Trust, through
M/s. Muhammad Junaid Farooqi and
Muhammad Qutubuzzaman, advocates.

Versus

Respondent No.1 : Nisar Ahmed.
Respondent No.2 : Noor-ul-Islam
Respondent No.3 : Shabrati, since deceased, through legal heirs
Respondent No.4 : Abdul Sami Alam
Respondent No.5 : Muhammad Zakir Hussain.

Date of hearing : **06.02.2020**

Date of Judgment : **21.02.2020**

JUDGEMENT

NAZAR AKBAR, J. The Applicant through this revision application has challenged the Judgment dated **28.07.2004** passed by the Ist Additional District Judge, West Karachi, whereby Civil Appeal No.285/2002 filed by the respondents was allowed and exparte judgment dated **24.10.2002** passed by the IInd Civil and Family Judge, West Karachi decreeing Civil Suit No.07/1998 filed by the Applicant was set aside.

2. Brief facts of the case are that the Applicant had filed Civil Suit No.07/1998 for permanent injunction against the Respondents stating therein that the Applicant is a registered trust having control over the administration of mosque and madrasah situated at Plot No.ST-1 & 2, Sector 15-D, Orangi Town, Karachi and they are also in possession of attached land where Eid prayers are being offered. It was further averred that the Respondents had made an attempt to

occupy the said attached land of the mosque and madrasah and upon failure they started intervention in the administration of the mosque and madrasah in order to forcibly occupy the attached land. The Respondents had also submitted applications for regularization of said land before the concerned authorities. On **05.01.1998** the Applicant Trust had come to know that the Respondents had made a plan to take over possession of mosque, madrasah and attached land forcibly, therefore, the Applicant filed Civil Suit for permanent injunction.

3. The Respondents/defendants failed to file written statement and, therefore, on **25.02.1999** the case was ordered to be proceeded exparte against the them. The Applicant/Plaintiff filed affidavit-in-exparte proof on **26.01.1999**. Consequently suit filed by the Applicant was decreed by exparte judgment dated **24.10.2002**. The Respondents against the said exparte judgment of the trial Court had filed civil appeal No.285/2002 which was allowed and exparte judgment of the trial Court was set aside, consequently the suit filed by the Applicant was dismissed being barred by **Order VI Rule 14 CPC**. The Applicant has impugned the said judgment of the appellate Court herein this IInd Appeal.

4. I have heard learned counsel for the Applicant and perused the record.

5. Learned counsel for the Applicant was unable to meet the legal hurdle as to the maintainability of the suit. The suit was not filed by the aggrieved party nor he was authorized to file suit against the respondents. The Applicant has sought declaration and injunction in respect of an open plot adjacent to the mosque said to have been run by a trust. They have obtained exparte decree by the trial Court. The

trial Court has not examined the question of maintainability of the suit since the requirement of **Order VI Rule 14 CPC** has not been fulfilled by the Applicant. Both the Courts below have relied on certain case laws and even reproduced the provisions of **Order VI Rule 14 CPC** in respect of the defect in the suit. The Applicant even otherwise was not entitled to any injunction in respect of the land which was never ever owned by the applicant nor had any title to claim possession.

6. In view of the above facts and discussion no case is made out for interference in the impugned judgments. Therefore, instant revision application is dismissed.

JUDGE

Karachi
Dated:21.02.2020

SM / Ayaz Gul