

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Revision Application No. 119 of 2020

Date	Order with signature of Judge
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For hearing of CMA No.4589/2020 (Stay) :

For hearing of main case :

07.12.2021 :

Mr. Asadullah Memon, advocate for the applicant.

Mr. Rasheed Ashraf Mughal, advocate for respondent No.1.

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NADEEM AKHTAR, J. – Suit No.652/2017 filed by the applicant against respondents 1, 2, 4 and 5 for declaration and permanent injunction was dismissed by the learned trial Court vide judgment and decree dated 23.07.2019 ; and, Civil Appeal No.92/2019 filed by the applicant against such dismissal was dismissed by the learned appellate Court vide impugned judgment and decree dated 08.10.2020 and 12.10.2020, respectively. The applicant has impugned the concurrent findings of the learned Courts below through this Revision Application.

2. The main ground urged on behalf of the applicant is that proper opportunity of hearing was not afforded to him and the Suit filed by him was not decided on merits. The record shows that the issues were settled by the learned trial Court on 02.04.2019 whereafter the Suit was listed for the evidence of the applicant. However, he and his counsel remained absent on several dates and on many dates adjournment was sought on their behalf. As the applicant had failed to lead evidence despite several opportunities, the learned trial Court proceeded to decide the Suit and pronounced the impugned judgment under Order XVII Rule 3 CPC. In the above circumstances, the applicant cannot plead or claim that proper opportunity was not granted to him as he himself chose to not lead his evidence despite several opportunities granted by the learned trial Court. In view of his conduct, the learned trial Court was fully justified in proceeding to decide the Suit by pronouncing the judgment therein under Order XVII Rule 3 CPC as there has to be a limit for granting time / opportunity to a party, and such indulgence by the Court must not be misused by the party.

3. Indeed the Court has the power to pronounce the judgment under Order XVII Rule 3 CPC when any party to a Suit to whom time was granted fails to produce its evidence or to cause the attendance of its witnesses or to perform any other act necessary for the purpose for which time had been allowed to it. However, it does not mean that the Suit should necessarily be dismissed. It is well-settled that even in such a situation the Court shall have to pronounce the judgment by applying its mind and by recording cogent reasons of the findings contained in the judgment. Perusal of the impugned judgment of the learned trial Court shows that five (05) issues were settled in the Suit in addition to the two (02) formal issues, however, no findings whatsoever were recorded therein in respect of any of the said five (05) issues. Likewise, the learned appellate Court has also not recorded findings in respect of any of the said issues.

4. In the above circumstances, the impugned judgments and decrees, being not sustainable in law, are hereby set aside and the matter is remanded to the learned trial Court with the direction to decide the subject Suit afresh latest by **15.01.2022** by recording cogent reasons of the findings on all the issues. Needless to say the Suit shall be decided on the basis of the material already available on record. Let this order be communicated forthwith to the learned trial Court through the learned District Judge Malir Karachi for compliance.

This Revision Application and listed application stand disposed of in the above terms with no order as to costs.

J U D G E