

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.2555 of 2014

<u>Date</u>	<u>Order with Signature of Judge</u>
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Present: **Mr. Justice Nazar Akbar**

Plaintiff : Mushtaq Hussain Qazi, Advocate in person.

Versus

Defendant No.1 : Federation of Pakistan.

Defendant No.2 : The Chief Commissioner Inland Revenue.

Defendant No.3 : Mr. Nazir Ahmed Shoro (The then Commissioner Inland Revenue Withholding Tax, RTO-II, Karachi).

Defendant No.4 : Mr. Afaque Ahmed Qureshi (The then Addl; Commissioner Inland Revenue, Withholding Tax Zone, RTO-II, Karachi).

Defendant No.5 : Mr. Wali Muhammad Shaikh (The then Deputy Commissioner Inland Revenue, Audit Unit, Zone-III, RTO-II, Karachi).

Through M/s. Muhammad Aqeel Qureshi & Muhammad Bilal Bhatti, Advocates.

Date of hearing : **25.3.2021**

JUDGMENT

NAZAR AKBAR, J. The Plaintiff, an Advocate, had filed this suit on **22.12.2014** against the Defendants for recovery of professional fee amounting to Rs.500,000/- and damages amounting to Rs.25,00,000/-. However, after almost 05 years, the plaintiff on 29.5.2019 filed amended plaint and increased his claim of damages to Rs.2,00,00,000/=.

2. Brief facts of the case are that the plaintiff is enrolled as an Advocate High Court of Sindh and he was engaged by Defendant No.2 by office letter No.Jud-1/C.C.I.R./RTO-II/S.O-IV/Kh/KESC/2013/

8598 dated 14.06.2013 to defend them in Suit No.770/2013 filed by KESC before this Court and Defendants No.2, 3 and 4 had signed Vakalatnama in favour of the Plaintiff. It was settled with Defendants No.2 to 5 that they would pay professional fee of Rs.500,000/- to the Plaintiff. The Plaintiff fully defended the said suit on behalf of the Defendants by way of filing comments, counter affidavits and also filed application under Order VII Rule 11 CPC. Subsequently the said suit was decided in favour of Defendants by order dated 15.04.2014 when application under Order VII Rule 11 CPC filed by the Plaintiff on behalf of Defendants was allowed. The Plaintiff forwarded copy of said judgment to Defendants No.1 and 2 vide his letter dated 16.04.2014. It is averred that the Plaintiff has earlier sent invoice dated 18.06.2013 for his professional fee to the Defendants and thereafter he has been demanding the same time and again but they kept on promising to pay the same. Finally the Plaintiff through his letter dated 03.10.2014 demanded the payment of professional fee from Defendant No.2 and also sent duplicate copy of invoice dated 18.06.2013 for Rs.500,000/- through courier service but till filing of the instant suit the Defendants have neglected to pay the professional fee to the Plaintiff. Therefore, the plaintiff had filed the instant suit for recovery of professional fee and damages.

3. Notices of the instant suit were sent to the Defendants and as per diary of Additional Registrar dated 19.2.2015, the same were served upon Defendants No.2 to 5 but they did not file their written statement, therefore, by order dated 17.09.2018, the matter was ordered to be proceeded exparte against them. In the said order the Plaintiff was also put on notice to satisfy the Court on the point of pecuniary jurisdiction. In consequence thereof the Plaintiff on 28.09.2018 filed application (CMA No.13634/2018) under Order VI

Rule 17 CPC praying therein that the Plaintiff may be allowed to amend the plaint to substitute/replace amount of Rs.25,00,000/- with Rs.2,00,00,000/-. The said application was allowed by order dated 10.05.2019 and the plaintiff was directed to file amended plaint, therefore, the Plaintiff on 29.05.2019 filed amended plaint, however, inadvertently he has not changed the amount of damages in the amended plaint and filed the same plaint as was earlier filed. In the meanwhile on 16.03.2020 Defendant No.1 (Federation of Pakistan) was also declared exparte. Thereafter the Plaintiff on 23.12.2020 filed another application (CMA No.15233/2020) praying therein that inadvertently the Plaintiff has not substituted/replaced figures of damages amount, therefore, he may be allowed to file corrected amended plaint. Learned counsel for Defendants have given their no objection, therefore, the said application was also allowed by order dated 24.12.2020 and the Plaintiff was directed to file amended plaint within seven days. Consequently, on 24.12.2020 the Plaintiff has filed another amended plaint. Since the matter was ordered to be proceeded exparte, no issues were framed and obviously no evidence was recorded and it was listed for final disposal.

4. In view of the above facts after filing amended plaint by the Plaintiff, on 18.02.2021, after more than six years of filing of the instant suit, defendants No.3, 4 and 5 have filed their separate written statements wherein they denied the claim of the Plaintiff and stated that no settlement took place between the Plaintiff and Defendants for payment of professional fee of Rs.500,000/- in respect of suit No.770/2013. However, they have admitted that the Plaintiff was engaged by the Defendants to defend suit No.770/2013 on their behalf and the invoice for professional fee sent by the Plaintiff was

duly forwarded to the competent authority for necessary action as per rules.

5. I have heard learned counsel for the parties and perused the record.

6. M/s. Muhammad Aqeel Qureshi and Muhammad Bilal Bhatti, Advocates have not disputed the facts alleged by the Plaintiff. The Defendants have even conceded to the jurisdiction of this Court on the amended plaint when the amended plaint was filed by the Plaintiff. The only argument advanced by the learned counsel for the Defendants was that the Plaintiff's claim of professional fees amounting to Rs.500,000/- has been forwarded to the relevant authorities and the final decision is awaited. As far as the claim of damages is concerned, neither any proof of damages has been filed by the Plaintiff nor he wants to press the damages. He has requested for the decree to the extent of professional fee claimed by him. Each and every document filed with the plaint has been admitted by the Defendants, as there is no denial to the effect that an invoice of Rs.500,000/- was sent as professional fees. The Defendants have admitted that they have forwarded the claim of the Plaintiff to the relevant authorities meaning thereby all the three Defendants present before this Court have not disputed that the claim of professional fee was not justified or they had ever objected to the amount of Rs.500,000/- as professional fee of the Plaintiff. In view of the admissions of the Defendants, the suit can be decreed in terms of Order XII Rule 6 CPC, since the Defendants are already on the notice of the plaint and they have filed their written statement. This position is further affirmed by the order dated 24.3.2021 when time was given to the counsel for the Defendants to verify that why the process of

professional fee of the Plaintiff has not been completed, however, no positive reply is there.

7. In view of the above, the suit has been decreed by short order dated 25.03.2021 to the extent of Rs.500,000/- only against Defendant No.1 and above are the reasons for the same.

JUDGE

Karachi,
Dated: 03.04.2021

Ayaz Gul