

ORDER SHEET
HIGH COURT OF SINDH, KARACHI

I.A. No. 77 of 2018

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar.

Mr. Justice Agha Faisal.

Abdul Abid AdvocateAppellant

Versus

Muhammad Ahmed Siddiqui & anotherRespondents

Date of hearing 05.04.2021

Mr. Abdul Abid Advocate, Appellant in person.

Mr. Muhammad Shahid advocate for respondent No. 1 & 2.

Muhammad Ali Mazhar, J: This appeal along with connected appeal i.e. I.A. No. 76 of 2018 were decided vide judgment dated 30.07.2020. As a consequence, the impugned judgment and decree were set aside and the matter was remanded to the learned District & Sessions Judge, Karachi, Central to consign the matter to the court of Senior Civil Judge to try the suit as an ordinary suit and pass decision on merits after considering the pleadings and evidence led by the parties. The judgment passed in appeal was not challenged by any party, however, on 26.12.2020, Mr. Abdul Abid advocate (appellant in I.A. No. 77 of 2018) filed a Review Application No.05/2020 and also attached a copy of judgment passed in Civil Suit No. 757 of 2020 after remand by the VIIth Senior Civil Judge Karachi, Central on 01.12.2020.

2. To start with, we raised the issue of maintainability of review application on the premise that the judgment in appeals was passed by this court on 30.07.2020, whereas, the review application was filed on 26.12.2020 after the

limitation prescribed and after lapse of considerable period. During the intervening period (the date of decision in appeals by this court and filing of review application belatedly), the trial court has already passed the judgment and decree in the suit. According to Article 162 of the Limitation Act, a review application under Section 114 read with Order XLVII CPC may be filed within twenty (20) days but the appellant filed the review application after much delay which is time barred and even no application for condonation of delay was moved to substantiate any sufficient cause which prevented the appellant not to move the review application within prescribed timeframe. The appellant Mr. Abdul Abid advocate in person argued that the order passed by this court has some material defects and no limitation runs against the void order. He further lodged the grievance that on remand though the trial court has decided the matter but failed to award damages and cost of litigation.

3. The order or judgment can be reviewed by the court on account of some mistake or error apparent on the face of the record or for any other sufficient reason. An error on law or fact should be apparent which error must have some material bearing on the fate of the case and not of an inconsequential import. A conscious decision as in this case neither can be termed as an error apparent on the face of the record nor an error related to some well settled proposition of law beyond controversy. Indeed, it is well settled exposition of law that in exercising a power to review, the court may not commence a fresh hearing as an appeal against its own judgment nor the purpose of filing review application amounts to afford fresh right of hearing or rehearing. The judgment sought to be reviewed was passed by this court after considering the law and facts. The nucleus of the case in appeal was whether the Iqrar Nama relied on by the appellant could be considered as a promissory note or not? After hearing the pros and cons, we reached to a finale that at best,

Iqrar Nama could be considered as an agreement rather than promissory note. According to Section 4 of the Negotiable Instrument Act, a promissory note is an instrument in writing containing an unconditional undertaking signed by the maker, to pay on demand or at a fixed or determinable future time a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument. The substratum or fabric of Iqrar Nama relied on by the appellant in the suit being a promissory note was signed as an agreement by the respondent No.1 and 2 and the appellant on 21.04.2013 in presence of witness with certain conditions of payment. Such type of document can be treated as an agreement and not a promissory note which by its nature a note to pay a certain amount unconditionally to certain persons or the bearer of the instrument where no signature of any specific beneficiary is required but it is only for payment of a certain sum of money to or to the order of a certain persons or to the bearer of the instrument unconditionally.

4. After passing the judgment by this court in appeals, the learned District Judge Karachi, Central in compliance of the order consigned the suit for disposal on merits which has already been decided. Being dissatisfied with the judgment passed by the learned Senior Civil Judge, the respondent No. 1 & 2 have already filed appeal No. 04 of 2021 which is pending in the Court of learned VIth Additional District Judge, Karachi Central. The appellant pointed out that this court in appeal passed an order for treating this suit as an ordinary suit and not in a summary chapter but while passing the judgment by the Senior Civil Judge in para-17 & 19 he has again considered the matter as summary chapter suit and held that the Iqrar Nama was promissory note which is our view a wrong exposition of law. The pith and substance of the judgment passed by the trial court deciphers that though the trial court tried the suit as an ordinary suit but in paragraph 17 and 18 a wrong impression has been conveyed

without adverting to the basic spirit and character of indenture of Iqrar Nama.

5. The learned trial court has decreed the suit in the sum of Rs.600,000/- (rupees six hundred thousand) but what we understand from the appellant submission that the claim of damages as well as cost of the suit/litigation was not considered, however, he admits that he has not filed any appeal against the judgment and decree of trial court. Learned counsel for the respondent No. 1 & 2 argued that in view of the remand order, additional evidence could have led but no such evidence was led by the appellant in the trial court and the trial court considered the evidence and found that appellant is not entitled for the damages.

6. Not only this review application is time barred but the appellant has also failed to point out any cogent justification or rationale for the review of the judgment which neither suffers from any procedural mistake/lapses nor any error apparent on the face of the record but in our understanding it was passed on correct exposition of law, therefore, the review application is dismissed.

7. Now we would like to take up another important aspect of the case which brought in our attention by the appellant. According to minutiae and niceties of Article 201 of Constitution of Islamic Republic of Pakistan, a decision of the High Court shall, to the extent that it decides the question of law or enunciated a principle of law is binding on all courts subordinate to it. In tandem, Article 203 of the Constitution expounds and elucidates that each High Court shall supervise and control all courts subordinate to it. Why we need to invite attention to the aforesaid articles? In the main judgment while disposing of the appeals, we clearly laid down that the appellant should have filed an ordinary suit and not a suit under summary chapter for simple reason that Iqrar

Nama was an agreement and not a promissory note, therefore, we had set aside the judgment of the trial court and remanded the matter. On remand, through Senior Civil Judge tried the suit as an ordinary suit as mentioned in the introductory paragraph of the judgment but in paras-17 & 18, wrong impression has been conveyed that Iqrar Nama was a promissory note. There is another ground reality that the appellant has not filed any appeal against the judgment and decree for claiming damages as well as cost of litigation. However at this stage subject to all just exceptions, he may file objections to the appeal filed by the respondent No. 1 & 2 which may be considered as cross appeal in which the appellant may raise all the objections and in order to effectively decide the appeal, we direct learned District & Sessions Judge Central, Karachi to withdraw the civil appeal No.4 of 2021 from the court of learned VIth Additional District & Sessions Judge Central, Karachi and decide the appeal himself after hearing the parties where he may also consider the findings given by the Senior Civil Judge in paras-17 & 18 of the judgment passed by him on 01.12.2020.

Judge

judge