

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.886, 887, 888, 889, 890 and 938 of 2009

DATE ORDER WITH SIGNATURE OF JUDGE

1. For hearing of CMA No.11902 /14
2. For hearing of CMA No.11562/09
3. For hearing of CMA No.3223 /09
4. For hearing of CMA No.11/10
5. For hearing of CMA No.6222/09
6. For hearing of CMA No.6223/09
7. For hearing of CMA No.6629/09
8. For hearing of CMA No.6224/09
9. For hearing of CMA No.7937 /11
10. For orders on Nazir report dt. 01.9.2010
11. For ex-party against defendant No.1

28.5.2015

Mr. Kazim Hassan Advocate for plaintiff.
Mr. Ghulam Murtaza Advocate for defendant No.2
Mr. Ejaz Ahmed Advocate for defendant No.3
Mr. Khurram Rasheed Advocate for defendant No.5
Mr. Asfandyar holds brief for Mr. Naveedul Haq Advocate
.X.X.X.

Learned Counsel for the plaintiffs has taken me to the two listed applications first at serial No.3 bearing CMA No.3223/09 and second application bearing CMA No. 6629/09 listed at serial No.8. it is contended by the learned Counsel for the plaintiff that though earlier a compromise application was filed duly signed by plaintiff and defendant No.1 as well as their Counsels, however a detail order was passed whereby the application was allowed in terms of order dated 04.7.2011 which is impugned by defendant No.5 in HCA No.119/11. Mr. Kazim Hassan learned Counsel for the plaintiff submits that without prejudice to such rights available to the other contesting defendants, the defendant No.1 has unambiguously admitted a part of the claim to the extent of Rs.5,790,905/-. It is contended by learned Counsel for the plaintiff that subsequent to the filing of compromise application, the plaintiff has preferred another application under order 12 Rule 6 CPC which is to be disposed of in terms of admission made in compromise application along with earlier application and that no counter affidavit has been filed. The earlier application under Order 12 Rule 6 CPC

claimed to be based on a reply of defendant No.1. Learned Counsel submits that the matter is also fixed for ex parte orders against defendant No.1 and as such they have no defence to offer against these applications. He has relied upon Order XII Rule 6 CPC in terms whereof on admission either through pleadings or otherwise the plaintiff is entitled for a judgment and decree. Learned Counsel has further relied upon the cases of Mian Tajamul Hussain & others vs. State Life Insurance Corporation of Pakistan reported in 1993 SCMR 1137 and Fazal Mahmood vs. Sardar Khan & others reported in PLD 1996 Karachi 475. Though it is the case of defendant No.5 that in principle the terms of compromise are not just and fair as its payment from a particular fund, would deprive the other claimants, however he submits that such admission could only be considered to the extent of a money decree against defendant No.1.

Mr. Aijaz Ahmed on the other hand also assisted to the extent that in case it is a money decree against defendant No.1 it may be considered according to law.

I have heard the learned Counsels and perused the material available before me. Prima facie it appears that the amount as agreed in terms of para-1 of CMA No.3223/09 is admitted as it is duly signed on behalf of defendant no.1 as well as through its Counsel. By this order the only question that is required to be resolved is the quantum of amount payable by defendant No.1 to plaintiff. How and from where such decree is to be satisfied is not being answered here nor it is prayed for. The present application is only to the extent of money decree. It is not a question raised and/or involved as to whether the amount i.e. to be paid by the defendant No.1 would be from the amount that has been procured by defendant No.1 by means which are against the interest of other creditors. It only relates to a money decree to which plaintiff is entitled in terms of admission made in the compromise application. Insofar as earlier application bearing CMA No.6629/09 is concerned, it

rather based on a letter of defendant No.1 which is not filed by defendant No.1 hence I would not make it a basis for considering claim of plaintiff in terms of the order XII Rule 6 CPC rather CMA No.11562/09 (compromise application) would be the basis of granting CMA No.3223/09. The application to the extent of the above amount is allowed and the suit is decree against defendant No.1.

At this stage learned Counsel for the plaintiff submits that since the suit has been decreed as against defendant No.1 to the extent of the amount as shown in the application, he would not press rest of the claim against defendants.

This order shall apply mutatis mutandis to all connected suits and respective applications and accordingly decree be drawn in all connected suit.

Judge