

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No. 105/2010

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on CMA No. 5660/12

04.06.2012

Ms. Naureen Shaikh Advocate for the plaintiff

1. Granted.

At the request of the learned Counsel, the application bearing CMA No. 2506/2012 is taken up. It is contended by the learned Counsel that since the matter is compromised between the parties and no issue has been framed as such they are entitled for return of the Court fee. It is further submitted that the suit is filed in the month of January 2010 and was disposed of as compromised in the month of March, 2010 therefore, the Court has consumed only two months as such the plaintiff is entitled for the return of the Court fee.

I have heard the arguments and have perused the record. It appears that the suit was filed on 25.10.2010 thereafter notices and summons were issued on 22.1.2010 and on 27.1.2010, the Bailiff's report was returned with endorsement that the defendant No.1 has refused to receive the notice as such bailable warrants were issued on 27.1.2010. On 29.1.2010 the plaintiff was able to obtain the order which is as under:-

“The learned Counsel for the plaintiff shall supply copies of the plaint along with its annexures and Applications to Mr. Muhammad Yaseen Azam, Advocate, during the course of the day.

The Defendant No.1 has not appeared in Court today. The bailable warrant issued against the Defendant No.1 could not be executed as according to SI Abid Hussain, the office was found closed. The report submitted by the SI Abid Hussain is taken record.

The learned Counsel for the plaintiff states that the defendants No.1 to 3 have unauthorizedly retained their containers No. TLF-132 and TLF-532 at Vardag No.1 Petroleum Services, Kamon Shaheed, Tehsil Obaro, District Ghotki. The Judicial Magistrate, Obaro, is directed to take over possession of containers No. TLF 132 and TLF-532, prepare inventory and park the said containers in the Court premises. The Defendant No.1 shall appear in Court on the next date as has been undertaken by Mr. Muhammad Yaseen Azad, Advocate. The Defendants No.2 and 3 are not required to appear.

To come up on 08-2-2010 at 08.30 A.M. Copy of this order be facsimile to the Sessions Judge, Ghotki and the Judicial Magistrate, Obaro for compliance today.”

On 08.2.2010 it was ordered that the defendant may file written statement and counter affidavit within four days with advance copy to the learned Counsel for the plaintiff who in turn may file a copy of rejoinder and the matter was adjourned. On 29.2.2010 the plaintiff again moved an urgent application and as such, the matter was heard on 24.2.2010, 01.3.2010 and 02.3.2010 and consequently the suit was compromised as appeared in the order dated 04.3.2010.

It appears that the Court has spent its valuable time in examining the case and in hearing the arguments and in deliberation and consequently the suit was compromised between the parties.

Hence, it cannot be said that the Court has not consumed its valuable time. The plaintiff has achieved what he could through his prayer in the plaint.

The learned Counsel has relied upon the case law of *Basit Rasool Qadir & others Vs. First General Leasing Model* (2004 CLC 430) wherein it is held that since no order on merit of the case affecting rights of parties had been passed, therefore, the appellant was entitled to refund of Court fee. The afore-cited case on the face of it is not applicable in view of the facts and circumstances mentioned above and more particularly when a decree in terms of the order dated 04.3.2010 was passed by this Court whereby the rights of the parties were determined, it cannot be said that the plaintiff is entitled for the refund of Court fee. The relevant factors which are important in consideration of the said application for refund of the Court fee are the proceedings initiated by the Court, hearing of the matter and the benefit derived by the party. All these factors have gone against the plaintiff. Factors referred above by no means exhaustive, depending upon the circumstances of each case, may includes many others.

Under the circumstances, I do not consider the application bearing CMA No. 2506/12 has any merit, which was taken up at the request of the learned Counsel, and as such the same is dismissed.

Judge