

ORDER SHEET

THE HIGH COURT OF SINDH, AT KARACHI

C.P. No.D-2068 of 2019

Date

Order with signature(s) of Judge(s)

1. For orders on office objection
2. For hearing of CMA No.9322/2019
3. For hearing of main case.

02.09.2020

Mr. Muhammad Ramzan Awan, Advocate for the Petitioner.

Mr. Muhammad Saleem Khan, Advocate for Respondent No.1.

Mr. Khurram Ghayas, Advocate for KDA.

This petition challenges the order passed on application under Section 12(2) of Civil Procedure Code, 1908, filed by the petitioner. Originally, the Suit bearing No.242 of 2015 was filed in the Court of Vth Senior Civil Judge, Karachi (West) wherein, notices and summons were issued. Notices/summons through Bailiff along with notices/summons through registered post, acknowledgment were never issued. When we enquired from the Counsel, who appeared before the trial Court, he conceded that he has no knowledge as far as registered post, acknowledgment in terms of Order V Rule 10(A) of CPC, 1908, is concerned, however, he requested that Record and Proceedings be summoned from trial Court. Consequently, Record and Proceedings of Suit No.242 of 2015 was summoned and it is before us. Counsel has searched out every document available in the file, but he could not satisfy us that notices and summons through registered post acknowledgment were issued. No Receipt of registry and Acknowledgment is available. Even we have gone through the file and couldn't find on record.

It appears that summons through registered post acknowledgment were never sent as required under Order V Rule

10(A) of Civil Procedure Code, 1908. For convenience, Order V Rule 10(A) of Civil Procedure Code, 1908 is reproduced as under;

“V-10(A). Service by Post. – (1) Simultaneously with the issue of summons under R. 9, there shall be sent, unless otherwise ordered by this Court, to the defendant, by registered post, acknowledgment due, another copy of the summons signed and sealed in the manner provided in rule 10.”

Record further shows that in the absence of such summons, which were to be issued under the law, service was held good upon issuance of summons through Bailiff when parokar of plaintiff accompanied him and thereafter publication was effected without following the Order V Rule 10(A) of Civil Procedure Code, 1908. The publication can only be effected if the earlier modes have been exhausted or for the reasons incorporated therein. Services through publication cannot be effected if the earlier steps of the issuance of summons through registered post acknowledgment have not been taken. Before granting publication, it was incumbent upon Court to have applied mind to the facts of the case and best efforts have been taken to serve defendants/petitioner. Reference can be made to **2009 CLD 1699 [re. Haji Muhammad Yaqoob Akhtar v. Habib Bank Limited]** We are afraid that service in this matter was held good without following the requirements of law and two forums ought to have considered that it is misrepresentation that notices/summons were attempted to be served through Bailiff when parokar accompanied him. We therefore, deem it appropriate to **allow** this petition to the extent of prayer clause made in the application under Section 12(2) of Civil Procedure Code, 1908, that Judgment and Decree be set-aside and case be remanded to trial Court to enable the petitioner to file written statement and contest the case on merits.

At this stage, Counsel for respondent No.1 has made requests that in case it is being remanded to trial Court, then trial

Court be directed to proceed the matter expeditiously and evidence be recorded after providing opportunities to the petitioner/defendant to cross examine the plaintiff and/or witnesses, who have already recorded their statements. Order accordingly. The petitioner/defendant may also lead their evidence and/or witnesses, if they so desire. This process may not be taken more than three (3) months and compliance report be filed. No notice is required to be issued to the petitioner. Trial Court may fix the case on **12.09.2020**.

Accordingly, the petition stands disposed of along with listed application(s).

J U D G E

J U D G E

*Faizan/PA**