

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

R.A. No.199 of 2015.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objections.
For hearing of M.A. No.54/2016.
For hearing of main case.

02-11-2020

Mr. Irfan Ahmed Qureshi advocate for applicant.
Mr. Muhammad Iqbal Memon advocate for respondent No.1.
Mr. Irfan Ali Bughio advocate for H.D.A. /respondent No.5.
Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

This revision application is arising out of almost concurrent findings of two Courts below. A suit for damages was filed by the respondent No.1 on account of construction raised by the applicant causing damages to the premises of respondent No.1. Before the trial Court the respondent No.1 has prayed for damages in the sum of Rs.100,000/- caused to the premises and additional amount of Rs.100,000/- for mental torture. With this set of pleadings the notices were issued to the applicant who filed written statement. Consequently evidence was recorded, the issues were framed on 05.03.2010 as under:-

1. *Whether the suit is not maintainable under the law?*
2. *Whether the construction raised by defendant No.1 is not illegal/unauthorized?*
3. *Whether the defendant No.01 obtained any prior permission to raise construction from the concerned authorities?*
4. *Whether the defendant is not liable to pay damages in account of mental torture?*
5. *Whether the plaintiff is entitled to relief claimed?*
6. *Whether the plaintiff has not come with clean hands before this Court?*
7. *Whether the plaintiff has filed the present suit to mint illegal money from the defendant No.01 on account of alleged damages.*
8. *What should the decree be?*

Respondent No.1 examined herself alongwith witness Sabir Hussain as her brother and Syed Qasim Ali as her neighbor, whereas Imran Hussain Khan was also examined as Deputy Director SBCA Hyderabad. These witnesses were subjected to cross-examination. While the matter was pending a counsel was also appointed as Commissioner to assess the damages and accordingly Mr. Muhammad Sulleman Unar was appointed. He submitted his report and was subjected to cross examination. Applicant/defendant was also examined and he was also subjected to cross-examination.

I have perused the two judgments as well as the evidence recorded by the trial Court. Trial Court came to the conclusion that the respondent No.1 has proved her case for damages in view of the evidence recorded, however, no expert witness was examined such as Architect/ Structural Engineer/ Civil Engineer who could have assess the damages if at all caused on account of construction raised by the applicant. Trial Court relied upon the opinions of respondent No.1/ plaintiff as well as her neighbor and brother of plaintiff/ respondent No.1. They were not expert witnesses to determine as to whether damages were caused by the applicant on account of construction raised by them on their land. Even the evidence of the Deputy Director SBCA was silent to the extent that the damages caused to the premises were on account of constructions raised by the applicant. Moreover, the trial Court decreed the suit beyond the prayer made in the plaint, i.e. from Rs.100,000/- to Rs.500,000/-, on his own. The opinion given by the trial Court was that there was so much devaluation of rupee and that there was so much rise in the cost of construction that Rs.100,000/- was not justified to grant damages to the respondent No.1.

I will not be concurred on account of opinion rendered by the trial Court. There has to be a formula and analysis on the basis of which the damages are being awarded, if there was any enhancement in the cost of construction or if there was any devaluation of rupee it has to have some basis, evidence on

record on the basis of which the amounts could have been calculated. A general opinion cannot be rendered by the trial Court. Surprisingly appellate Court also misjudged the damages as determined by the trial Court. Appellate Court also did not applied its mind as to how the suit was decreed beyond its prayer clause and if at all it had to, what were the basis, formula and reasoning assigned by two Courts below. At the conclusion of hearing we have asked counsel if the matter could be referred back to the trial Court for expert opinion and for his/her examination so that actual issue could be unearthed. Both counsel have not objected to this consideration. Consequently two judgments of trial Court and appellate Court are set-aside and the case is remanded to the trial Court leaving respondent No.1 at liberty to examine an expert well conversant with the issue in hand which may be an Architect/ Structural Engineer/ Civil Engineer with the observation that in case the suit is decreed, cost of litigation including cost incurred in appointment of Architect/ Structural Engineer/ Civil Engineer shall be a part of decree. Revision application as such is disposed of in these terms.

JUDGE

Irfan Ali