

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP No.S-149 of 2021**

Order with signature of Judge

Hearing/Priority Case

1. For orders on office objections
2. For hearing of CMA No.1045 of 2021
3. For orders on CMA No.1046 of 2021
4. For hearing of main case
5. For hearing of CMA No.1047 of 2021

29.03.2021

Mr. Javed Anwar, Advocate for the Petitioner
Mr. Pervez Ahmed Mastoi, AAG

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From perusal of record, it appears that Suit No.150 of 2018 for maintenance, recovery of dowry articles and dower was decreed vide judgment dated 30.7.2018 by trial court i.e. Family Judge XXIII, Karachi (East). Decree is available at page 31. Aggrieved of it, the petitioner filed a Family Appeal No.151 of 2019, however, such appeal was not pressed by the counsel and accordingly on his own statement the appeal was dismissed as not pressed vide order dated 18.3.2020. The petitioner also filed a suit for restitution of conjugal rights against respondent No.3 which was dismissed vide order dated 14.3.2018 and consequently, Khula was also granted. In this regard, per counsel for the petitioner an execution application is pending against the petitioner in this regard. It is urged that the counsel had no instruction to withdraw the appeal, referred above.

Aggrieved of judgment dated 30.7.2018 of Family court and order 18.3.2020 of Appellate court, the petitioner filed the instant petition.

I have heard learned counsel for the petitioner and perused the material available on record.

The act of counsel who appeared before the court is to be seen as if the party himself has appeared. The counsel is only an agent of the party and he is entrusted with all the powers as being enjoyed by the party himself. Unless there is anything contrary, an advocate may abandon an

issue, withdraw a case or compromise or settle the dispute, but not in relation to the matters alien to the proceedings. He can even make an admission as facts. Reliance is placed on the following case laws:

In the case of *Dr. Ansar Hassan Rizvi v. Syed Mazahir Hussain Zaidi and 3 others* [1971 SCMR 634], Hon`ble Supreme Court of Pakistan was of the view that the contention that the Advocate of the petitioner had no authority to compromise the matter on behalf of the petitioner is untenable. Reliance was placed on the case of *Sourendra Nath Mitra and others v. Tarubala Dasi* [AIR 1930 PC 158] that unless there is specific authority to the contrary, and in the absence of a written authority such as a Vakalatnama an Advocate has implied authority of his client to settle the suit.

Even in this case it has not been contended that the learned Advocate held any Vakalatnama which expressly or impliedly restrained or debarred him from entering into and making such statement.

In the case of *Mst. Bashiran Bibi & others v. Jewni & others* [1997 SCMR 1079], Hon`ble Supreme Court of Pakistan held as under :

“5. The contention that the compromise should have been recorded in writing and the contents thereof should have been verified by the learned Judges of the Division Bench from the parties is also devoid of any force. Before the High Court if the learned counsel for the parties make a statement, the Court, as a matter of practice, accepts their statement without doubt as to the correctness or authenticity of the same, The above two reports relied upon do not support the petitioners' case. The first cited judgment runs counter to the above submission of the learned counsel for the petitioners, whereas the facts of the second case are distinguishable from the case in hand. The petition has no merits. Leave is refused.”

In the case of *Hassan Akhtar and others v. Azhar Hameed and others* [PLD 2010 SC 657], Hon`ble Supreme Court of Pakistan held as under:

“13. It is by now well-settled that an Advocate has authority to make statement on behalf of his client, which is binding upon the client, unless there is any thing contrary in the Vakalatnama putting restriction on the authority of the Advocate to compromise or abandon claim on behalf of the client. The Advocate's power in the conduct of a suit allows him to abandon the issue, which in his discretion, advisable in the general interest of his client.”

“16. Where Vakalatnama is given, the counsel empowered to compromise the suit without any express authority from his client unless such powers are specifically countermanded by the client.”

Hence, at this belated stage it cannot be pleaded that the counsel was not empowered to withdraw the appeal. The counsel who acted on behalf of the appellant acted in accordance with law and gave the statement before the court. The statement of counsel/advocate is deemed to be a statement of party. Hence, no indulgence is required in so far as dismissal of the appeal on the ground that it was not pressed by the counsel without instruction of client. Vakalatnama deemed to have all permissions unless specifically shown otherwise. The impugned order was passed on 18.3.2020 whereas, this petition was filed on 18.2.2021 i.e. after delay of almost a year, hence, such delay cannot be ignored while entertaining this petition, hence, the petition has no substance. Accordingly, the same is dismissed a/w pending applications.

JUDGE