

ORDER SHEET

HIGH COURT OF SINDH AT KARACHI

HCA No.05 of 2020

Date Order with signature of Judge

1. For orders on CMA No.307/2020 (U/A)
 2. For orders on office objection a/w reply as at "A".
 3. For orders on C.M.A No.35/2020 (Ex/A).
 4. For hearing of main case
 5. For orders on CMA No.36/2020 (Stay)
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03.02.2020.

Mr. Mujtaba Sohail Raja, advocate for the appellants.

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1. Urgency granted.
2. Ignored.
3. Exemption is granted, subject to all just exceptions.
- 4-5. Learned counsel for the appellants states that the learned Single Judge was not justified in dismissing the application filed under Order VII Rule 11 CPC bearing CMA No.14474/2018 by the present appellant, who were defendants No.1 & 2 in Suit bearing No.109 of 2018. Learned counsel states that the person who has filed the said suit on behalf of the plaintiff (respondent No.1) on the basis of a power of attorney does not have the power to do so, as if the respondent No.1 is suffering from any illness she has to be examined. He stated that in order to ascertain her mental illness /soundness or otherwise it was imperative that the respondent No.1 to be examined in person and her attorney cannot be examined and since the same has caused serious prejudice to the present appellants hence the instant appeal has been filed.

At the very outset, the learned counsel was asked to satisfy with regard to maintainability of this High Court Appeal and was asked to explain that whether he has moved a proper application before the learned Single Judge with the prayer to call the respondent No.1 for examination of the aspect that whether she is in a condition to be examined or not, to which he replied in negative. He, however, submits that he will shortly move the said application before the learned Single Judge.

Learned counsel has been heard and record has been perused.

Since the matter is admittedly highly contentious between the parties, which require recording of evidence and cross-examination of the parties, and when admittedly issues have been framed and issue No.2 specifically pertains to the mental soundness of the respondent No.1, hence, this High Court Appeal appears to be premature and not maintainable. Counsel is at liberty to file application regarding the physical presence of the respondent No.1 before the learned Single Judge, if deems necessary, which would be decided after hearing the parties in accordance with law. This High Court Appeal is, thus, found to be misconceived and not maintainable, as the main grievances of the present appellants have already been taken care of in the issues framed in the Suit No.109/2018. This High Court Appeal therefore stands dismissed in limine alongwith the listed application.

JUDGE

JUDGE