

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No.11 of 2004

Military Estate Officer, Thandi Sarak,
Hyderabad. APPLICANT.

Versus

Karim Bux and others RESPONDENTS.

1. For hearing of CMA 1407/2006
2. For hearing of CMA 238/2004
3. For hearing of main case

01.04.2022

Mr. Muhammad Hamayoon Khan, D.A.G. for applicant.

ORDER

MUHAMMAD SHAFI SIDDIQUI, J. This revision application is pending since last almost 16 years for a very short point. Respondent No.1 (now deceased) filed a suit for declaration and permanent injunction which was contested by the applicant on merit. The trial court passed a judgment and gave cumulative findings on issues No.4 to 8. Suit was dismissed eventually. Respondent preferred an appeal before the appellate court which reversed the findings on the count that the provisions of Order 20 Rule 5 CPC were not taken into consideration while deciding the issues cumulatively. The appellate court was of the view that since there were independent issues the separate findings for each issue should have been given. I am afraid that this is not the spirit of the law. Order 20 Rule 5 CPC reads as under:

5. *Court to state its decision on each issue.* In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.”

It enables the court to give cumulative findings of issues if are interconnected. The spirit of the law is that there has to be “findings” of each and every issue / question arising out of the pleadings may it be joint / cumulative or separate, and if some cumulative findings are given in the shape of a common reasoning then it should be sufficient, if the reasons are sufficient. It is not the desire of the law that every issue is to be dealt with separately.

2. There is no independent application of any of the parties that they require further evidence in the matter. The appellate court thus could have perused the evidence and gave its findings on the issues and/or point to be determined by court. Even the appellate court could have framed additional issues if so desired, but that is not the case of either party.

3. Hence, I do not find any legitimate reason to remand the case by appellate court to the trial court. Appeal is a substantive relief of a party, however, since the appeal was not decided on merit and since no case of further evidence is of any of the party, I deem it appropriate to send the matter back to the appellate court for a decision afresh on the appeal of the respondent as Civil Appeal No.38 of 1999. The impugned order stands set-aside and appeal shall now deemed to be pending. However, the appellate court in consideration of the evidence available, shall pass a fresh judgment after hearing the parties and/or their counsel. It is expected that the appellate court shall decide the case after hearing the parties and/or their counsel in three months’ time.

Appeal disposed of along with listed applications.

JUDGE