

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-4644 of 2016

[Sardar Ghulam Mustafa v. Memon Group of Industries and others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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**Present: - Muhammad Shafi Siddiqui
Jawad Akbar Sarwana, JJ**

Priority

1. For hearing of CMA No.23082/2016.
2. For hearing of main case.

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Dated 19.10.2023

Mr. Majid Khan, Advocate for the petitioner.
Mr. Altaf Ahmed Shaikh, Advocate for Respondent No.6.
Mr. Abdul Jaleel Zubedi, Assistant Advocate General.

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Mr. Muhammad Ayub Awan, Advocate files vakalatnama on behalf of Respondent No.1, which is taken on record.

We have heard learned counsels at length and perused the material available on record.

It appears that in the second round of litigation in relation to an application under Section 12(2) CPC, the trial Court dismissed the application on consideration of the evidence recorded, whereas, the revisional Court in revision application No.31/2016 not only allowed the application under Section 12(2) CPC but in addition to it also dismissed the suit of the petitioner.

We are of the view and so also learned counsel for Respondents that the evidence so recorded could at the most be attributed to a frame of Section 12(2) CPC and not beyond to the extent of evidence required for trial of suit. Had it been an evidence recorded in main suit, a revisional court could have exercise jurisdiction under Order-XLI Rule 24 CPC but it is not the case here. The evidence so recorded could only enable the trial court and the revisional court to pass order within frame of Section 12(2) CPC and not beyond. The revisional court exceeded its jurisdiction when it dismissed the suit of

the petitioner, though no such evidence exists to decide the suit as well.

Since the counsels have agreed, particularly learned counsel for the respondents, the portion of the impugned judgment whereby suit of the plaintiff was ordered to have been dismissed, stands set aside, whereas, order passed under Section 12(2) CPC setting aside the judgment and decree of the trial court is maintained. The matter is remanded back to the trial court for recording evidence after framing issues in the main suit of the petitioner. It will be appreciated if the trial court attempts to conclude the evidence and matter preferably in a period of four months from the date of this order.

The instant petition stands disposed of in the above terms along with pending application(s).

JUDGE

JUDGE

Ayaz Gul