

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

2nd Appeal No.05 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection
2. For orders on CMA-543/2018
3. For hearing of main case.

13.11.2023

Mr. Abdul Hameed Bajwa, advocate for appellant.

This 2nd Appeal is pending since 2018 without any progress. Matter is taken up today and at the very onset attention of the learned counsel is drawn to paragraph 11 of the judgment dated 21.11.2017, rendered in Civil Appeal No.91 of 2017, and the counsel is asked to demonstrate any infirmity therewith meriting invocation of Section 100 C.P.C. The aforementioned paragraph is reproduced herein below:

“11. The perusal of the evidence shows that the plaintiff in the plaint has stated that the loan was paid in presence of witnesses but he has not disclosed the name of the witnesses in whose presence the loan was given. No exact date and time of delivery of the loan was also given by the plaintiff. The plaintiff at trial has also failed to produce two witnesses to prove the financial transaction. The learned trial Court while deciding issue No.1 in its judgment rightly held that neither the plaintiff/appellant disclosed the name of those witnesses in whose presence the loan was given nor has he disclosed the name of those witnesses in his evidence; that the loan amount per plaintiff was given in the year 2009 but the witness of the plaintiff namely Muhammad Akhter in his evidence has deposed that the loan was given in the year 2008 in his presence; and that the plaintiff/appellant’s case is also hit by Article 17 of the Qanoon-e-Shahadat Order, 1984..”

The learned counsel was confronted with the findings as particularized supra, and asked as to whether they were commensurate with the facts and he replied in the affirmative. Learned counsel was then asked to demonstrate any infirmity in the appellate order meriting interference under Section 100 of the Code of Civil Procedure, however, he remained unable to do so. The only submission articulated was that the evidence has not been appreciated in its proper prospective.

It is settled law that a second appeal may only lie if a decision is demonstrated to be contrary to the law; a decision having been failed to determine some material issues; and / or a substantial error in the procedure is pointed out. It is categorically observed that none of the aforesaid ingredients have been identified by the learned counsel. In such regard it is also important to advert to section 101 of CPC, which provides that no appeal shall lie except on the grounds mentioned in the Section 100 of CPC. While this Court is cognizant of Order XLI Rule 31 CPC, yet at this stage no case has been set forthwith to entertain the present appeal in view of the reasoning stated above. As a consequence hereof, in *mutatis mutandis* application of Order XLI Rule 11 C.P.C, this appeal is hereby dismissed *in limine* along with pending application.

Judge