

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No.88 of 2021

Muhammad Ayub Sarothia and another
Versus
Aslam Sardar-ud-Din Jeewani and others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Hearing (priority) case

1. For orders on CMA No.5238/2023 (U/A).
2. For hearing of main case.
3. For hearing of CMA No.1218/2021 (stay).

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Dated 21.11.2023

Mr. Yousuf Moulvi, Advocate for the appellant.
Mr. Jamil Ahmed Shah, Advocate for Respondents.

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- 1) Urgency granted.
- 2-3) It appears that there were two suits pending one for recovery and the other for damages. Without consolidating the suits, a common order was passed whereby in one of the suits [suit No.320/2012], which is defended by the appellant, he was debarred from filing written statement, perhaps originally by the Additional Registrar (O.S). It was followed by an application which was dismissed in terms of impugned order.

Be that as it may, the impugned order suggests that perhaps it is a common order passed in both the suits as the common issues were framed. Had the appellant been debarred from filing written statement, that suit could have been heard and disposed of independently as being exparte but that did not happen and consolidated issues were framed. The wisdom perhaps was that both the suits be tried together. If that is the case then either the plaint of the appellant for recovery be taken as defence or he ought to have been allowed to file written statement subject to cost.

This understanding is not seriously opposed by respondents' counsel, hence we deem it appropriate that written statement belatedly filed in suit No.320/2012 be taken on record and if required, additional issues be framed and then the matter be proceeded expeditiously through the commissioner already appointed. The cost of Rs.25,000/- be deposited by the appellant in favour of High Court Clinic in a week's time.

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

JUDGE

JUDGE

Ayaz Gul