

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**High Court Appeal No.471 of 2018**

Mrs. Najma Sajjad-ul-Hassan & another  
Versus  
Mr. Aftab Ahmed Sethi and others

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

1. For hearing of main case.
2. For hearing of CMA No.3747/2018 (stay).

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**Dated 28.11.2023**

Mr. Muhammad Altaf, Advocate for the Appellants.

M/s Syed Ahsan Imam Rizvi and Faiz Malano, Advocates for Respondent No.1.

Mr. Atif Shujaat M. Beg, Advocate for Respondent No.3.

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This appeal impugns an order of the learned single Judge whereby an application for recalling the order of closing the side of the appellants being defendants No.4 and 5 was dismissed. On the crucial day when the side of the appellants/defendants was closed i.e, 10.10.2017 by the learned single Judge, counsel was not present. The defence of the appellants' counsel was/is that his name did not appear in the cause list, however, this assertion of the appellants in shape of affidavit was not denied.

No doubt on the earlier dates the witnesses of the appellants remained absent, however, what matters was that on the crucial day when the side was closed there was a sufficient cause that prevented the counsel from appearance and calling the witnesses. The commissioner submitted his report dated 15.09.2017, which was taken on record on 10.10.2017 when the side of the appellants was closed and the counsel was unaware about the fixation of the matter.

Mr. Rizvi, learned counsel for Respondent No.1 has seriously opposed the appeal by saying that virtually they would be adopting evidence of other witnesses.

That is not the decisive point. Recording no evidence and adopting evidence of other witnesses both have different applications in law. Thus we deem it appropriate to allow this appeal to the extent that one last opportunity be given to the appellants/ defendants to record evidence subject to cost of Rs.50,000/- to be deposited by the appellants in favour of High Court Clinic. In case the evidence is required to be recorded through video link, steps in this regard be taken in view of the judgment of Supreme Court reported in PLD 2023 SC 211 [*Meera Shafi v Ali Zafar*] followed by order dated 02.10.2023 in Suit No.622/2012 (un-reported). It is expected that the commissioner shall record the evidence within a period of four weeks from the date of this order.

The cost shall be deposited by the appellants in a week's time and in case the cost is not deposited in a week's time, the opportunity to record evidence will not be available.

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

JUDGE

JUDGE

Ayaz Gul