

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

R.A.No.271 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For order on office objections
2. For order on CMA-1033/2022
3. For order on CMA-3042/2021
4. For order on CMA-3043/2021

08-12-2023

Mr. Parshotam K. Khatri, advocate for applicant.
Mr. Ayatullah Khwaja, advocate for applicant/intervener.

This matter is pending since 2021 without any progress and even notice has not been sought / issued till date. Briefly stated, the applicant filed F.C. Suit 135 of 2020 before the 1st Senior Civil Judge, Umerkot and vide order dated 4th February, 2021 the plaint therein was rejected. Civil Appeal 05 of 2021 was filed before District Judge, Umerkot and the same was dismissed vide judgment dated 28.10.2021.

Despite being asked to demonstrate any manifest infirmity in the respective orders, warranting interference in revision, the learned counsel made no endeavor to do so. The entire contention of the applicant's counsel was that the two concurrent judgments may be set-aside and the matter be remanded back to the trial Court; *only* so that the applicant may withdraw the suit and file afresh.

Permission to file afresh was also sought from this court. It was submitted that unless the relevant permission was granted by this court, a subsequent suit would be barred by limitation.

The learned counsel was asked to cite any law that empowered the court to grant the relief sought, however, he remained unable to do so. Learned counsel was also asked as to whether any grounds were made out per section 115 C.P.C, however, once again he remained unable to assist.

It is observed that the appellate court appears to have exercised its jurisdiction and no infirmity in such regard is manifest. It is trite law¹ that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the orders impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forum.

Notwithstanding the foregoing, learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that either impugned order is either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity.

¹ Per *Faqir Muhammad Khokhar J. in Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.

In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed *in limine* along with listed applications.

Judge

Ahmed/Pa