

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

1st Appeal No.4 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection No.15
2. For orders on CMA 1906/2022
3. For hearing of main case

19.12.2023

Mr. Ahmed Murtaza A. Arab advocate holds brief for counsel for appellant.

Briefly stated, Summary Suit 88 of 2018 was filed before the 5th Additional District Judge Hyderabad and the same was allowed vide judgment dated 15.01.2020. It is considered illustrative to reproduce the pertinent content herein blow:

“Perusal of record shows that the defendant was duly served through Superintendent Special Prison Nara, Hyderabad vide letter dated 26.11.2018. On 31.01.2019 defendant received copy of plaint and its annexures while application under order XXXVII Rule 3 CPC was filed on 24.04.2019. Application under section 5 of Limitation Act was filed by the defendant on 7.5.2019 on the ground that accused was released from jail on 8.4.2019. It is important to note that after service of notice and receiving copy of plaint and its annexures, application for leave to defend the suit should have been filed within ten days. If the plea of defendant is taken into consideration that he was released from jail on 8.4.2019 then in that case he was also bound to submit application for leave to defend the suit till 18.4.2019 but the same was filed on 24.4.2019.

It is not out of place to mention here that plaint and its annexures were also received by the defendant on 31.1.2019. The said period remained unexplained.

In view of above case law and discussions, application under section 5 of Limitation Act and application under order XXXVII Rule 3 CPC for leave to defend the suit merit no consideration and are dismissed. Consequently, summary suit filed by the plaintiff is decreed to the extent of Rs.36,84,710/- (Rupees Thirty Six Lac, Eighty Four Thousands, Seven Hundreds and Ten only) with no order as to costs.”

Present appeal assails the impugned order solely on the grievance of the present appellant having been non-suited in so far as the leave to defend application was concerned. On the last date the appellant's counsel was confronted with the preponderant applicability of the bar of limitation, as apparent from the impugned order. However, instead of addressing the same she sought a brief adjournment and at her own request the matter was adjourned to a fixed date, being today. Today, however, brief is being held and adjournment is being sought for no cogent reason whatsoever. Appeal is dismissed for non-prosecution along with pending application. The office is instructed to communicate a copy hereof to the 5th Additional District Judge Hyderabad.

Judge