

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

HCA No.51 of 2006

Date	Order with signature of Judge
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Hg Case

1. For orders on CMA No.3597 of 2019
2. For hearing of CMA No.1723 of 2020
3. For hearing of CMA No.323 of 2006
4. For regular hearing

20.12.2023.

Mr. Masood Khan Ghori, Advocate for the appellant alongwith
appellant/Fahimul Huda
Syed Abdul Rauf, Advocate for respondents No.1&2 alongwith
respondent No.1/Anwarul Huda

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This appeal impugns an order dated 29.11.2005, passed on an application bearing CMA No.1257 of 2004 in Suit No.1452 of 1999, wherein a request was made for transferring the suit, connected and consolidated with other suits, to the civil courts for trial/adjudication instead of this court. It is the appellant`s case that in this particular suit wherein an application bearing CMA No.1257 of 2004 was filed, the property`s value was provided on an exaggerated scale.

We have perused the plaint of Suit No.1452 of 1999. It is only for the dissolution of the partnership firm and para 8 of it deals with the valuation which is as under :

8. *That for the purposes of Court fees and jurisdiction the suit is valued at Rs.1,500,000.00 for declaration, for accounts at Rs.1,000,000.00 for dissolution at Rs.500,000.00 and for the relief of Receivership at Rs.50,000.00. The plaintiffs have paid maximum Courts fees of Rs.15,000.00 thereon.*

The act that concerns that the suit valuation and court fee give a discretion to the applicant/plaintiff to assess and value the relief.

Record reveals that this appeal was allowed vide short order dated 2.6.2006, however, it could not be signed by any of the two Judges. On 16.9.2008, the matter was allowed to be fixed for re-hearing. On its re-hearing the appeal was dismissed in "limine" as ordered on 8.10.2008, in presence of both counsel. On a review application by the appellant, the order dismissing the appeal on merit was recalled as perhaps appellant's counsel was not present and his presence was incorrectly noted in the order. Appeal was fixed for re-hearing again on 3.12.2010. The appeal was dismissed for non-prosecution on 19.10.2012 and was yet again restored by consent on 28.1.2016. This appeal has now been heard and disposed off fourth time, after 17 years of its filing.

There is nothing in the order which could enable us to interfere and intervene. The four suits were pending before ordinary original jurisdiction of this court and reasons have been provided for dismissing the application.

From perusal of the record it appears that appellant/respondent filed Suit in respect of the properties and partnership firm. All the suits filed by the appellant and respondent were admittedly consolidated for framing of common issues for the purpose of avoiding conflicting decision. In the matter involving identical question of law and in which subject matter is the same and/or connected somehow, it is always desirable in such a situation that same should proceed together and if required matter can be called from a court having lesser value than the pecuniary jurisdiction, to be adjudicated along with suit of higher value, pending in a court with enhanced pecuniary jurisdiction but it cannot be vice versa; additionally if not decided together same may result in conflicting judgment or may cause prejudice to either of the party.

Since consolidation order of suits in which this court has pecuniary jurisdiction has already been passed, even if the value of the Suit bearing No.1452/99 is lesser than pecuniary jurisdiction of the court the proceedings under such suit can be retained as greater/enhanced

pecuniary jurisdiction includes lesser pecuniary jurisdiction in it and learned judge rightly passed the order dismissing the application for transfer of the suit from this court to civil court.

We enquired from the counsel that valuable time was consumed and this appeal has no merit at all and could be dismissed with special cost, he then conceded and did not press the appeal after arguing the matter at length. The court was, however, compelled to hear it finally to its totality and the same was heard earlier three times and pending for last 17 years. Thus, we dismiss this appeal imposing a cost of Rs.10,000/- upon the appellant to be deposited in a week`s time in favour of High Court Clinic.

Mush/ps

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