

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
HCA No.430 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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1. For order on office objection.
2. For hearing of main case
3. For hearing of CMA No.4368/2022 (stay)

17.08.2023

Syed Hassan Ali, Advocate for the Appellant.
Mr. Naeem Akhtar Talpur, A.A.G.

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The instant High Court Appeal (HCA) has been filed impugning the order dated 25.11.2022, passed by the learned Single Judge in Suit No.230/2019.

Syed Hassan Ali, Advocate is present for the Appellant and stated that on the said date when the matter was decided by the learned Single Judge only CMAs were fixed for hearing and not the entire suit, however, the learned Single Judge, while disposing of the CMAs filed by the appellant, has dismissed the entire suit alongwith cost, which has caused serious prejudice to the appellant. He stated that when the matter was not fixed for hearing with regard to the main case but only CMAs were fixed, the learned Single Judge could have at best dismissed the applications filed by the appellant and adjourned the matter for hearing of the main suit. However, according to him, the learned Single Judge, while dismissing the applications filed by the appellant, has dismissed the entire suit, which was not fixed for hearing on the said date.

The Respondent No.1 has not appeared in the instant matter despite proper service.

Learned AAG is present for Respondents No.2, 3 & 4 and has opposed this HCA and stated that while deciding the CMAs, the learned Single Judge came to the conclusion that the suit is not maintainable on account of order VII Rule 11 CPC and that the

matter has been adjudicated upon through judicial proceedings upto Hon'ble Supreme Court, therefore, this HCA was not maintainable and therefore the suit was rightly dismissed by the learned Single Judge.

We have heard learned counsel for the appellant as well as learned AAG at some length and have also perused the record.

Learned AAG was categorically asked that whether on 25.11.2022 the main suit was fixed or only CMAs were fixed to which he replied that only CMAs were fixed and the main suit was not fixed for hearing.

Perusal of the record reveals that on the said date i.e. 25.11.2022 only CMAs were fixed for hearing and not the entire suit. In our view the learned Single Judge, if was of the view that the suit is not maintainable then he could have given a date to the appellant for proceeding the matter after fixing the suit for hearing, when on the instant date i.e. 25.11.2022 only CMAs were fixed for hearing and not the entire suit, which is an admitted fact.

We therefore, under the circumstances and in the interest of justice remand this case to the learned Single Judge with the directions to take up the main suit alongwith application under Order VII Rule 11 CPC, if any, and thereafter decide the same in accordance with law, after providing opportunity of hearing to both the sides.

With these directions the instant HCA alongwith the listed and pending application(s) stand disposed of.

JUDGE

JUDGE