

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Suit No. 2447 of 2016

Date	Order with Signature of Judge
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1. For hearing of CMA No.3914/2020 (u/s 5 of Contempt)
2. For hearing of CMA No.13881/2019 (u/s 94 r/w 39)
3. For hearing of CMA No.1337/2020 (u/s 94 r/w 39)
4. For order on CMA No.21367/2021 (u/s 151 CPC)
5. For evidence

05.09.2023

Mr. Mushtaq A. Memon, Advocate for Plaintiff
Mr. Muhammad Yahya, Advocate for Defendant No.2
Defendant Witness Imdad Ali Mugheri, Manager-II, (CNIC No.42201-6369271-1)
is present

1 to 3 Deferred.

5. Office is directed to re-list the matter for evidence in Court in the first week of October 2023.

4. Suit 2447/2016 is being listed for recording of evidence in Court. Through this Application under Section 151 CPC (CMA No.21367/2021), Defendant No.2 Counsel seeks adjournment/postponement of further proceedings in this suit on the ground that he has filed a Constitutional Petition, namely, CP No.D-4863/2021 against the Plaintiff's Counsel, the Pakistan Bar Council [the Regulator] and others, challenging the right of Plaintiff's Counsel to practice law post Plaintiff Counsel's retirement. He contends that until the said Constitutional Petition is decided, the proceedings in this suit should be stayed. He argues that his CP No.D-4863/2021 presents a fresh proposition of utmost importance to the reputation of this Court. He contends that previously reported cases are not applicable to the case at hand. Ms. Syngenta Pakistan Ltd. through Authorised Supply Manager v. S.M, Asif and 2 Others, PLD 2013 Sindh 536 is not relevant on the grounds that first it relates to the post-retirement practice of Mr. Shahid Anwar Bajwa and not the present Plaintiff's Counsel. Secondly, the references to Mr Rashid Rizvi and present Plaintiff's Counsel, in the said case law were all made prior to the introduction of Article 270AA (3)(b) of the Constitution of the Islamic Republic of Pakistan. For the same reasons, i.e. that there is no discussion on the consequences of Article 270AA (3)(b) in the case law up to date, the reported Judgment of the Supreme Court of Pakistan in Shahid Nawar Bajwa v. S.M. Asif and others, PLD 2018 SC 337, is also not applicable. He argues that these two reported cases do not address the changed circumstances which are before this Court and agitated by him in CP No.D-4863/2021, i.e. the circumstance that sometime in the year 2019, Mr. Mushtaq Memon availed pensionary benefits. The two judgments have not

discussed the effect of such circumstances. This, he submits, has consequences, and Plaintiff's Counsel can no longer practice law before this Court after having elected to avail pensionary benefits pursuant to Article 270AA(3)(b). Defendant's Counsel has not filed any notification or circular issued by the Pakistan Bar Council cancelling or suspending Plaintiff's Counsel's licence to practice law under Article 270AA(3)(b). Nor Defendant's Counsel cited any stay order passed in CP No. D-4863/2021 to date temporarily suspending Plaintiff Counsel's licence to practice law before the Chief Court.

Heard Plaintiff's Counsel. The suit is presently at the stage of evidence. In Rasheed A. Razvi v. Mst. Sakina Suleman and Another, PLD 2022 Sindh 403, a Division Bench of this Court had to decide upon the validity of certain orders passed by a single judge on the trial side who had framed "fundamental questions of public importance" to be decided during the course of the trial proceedings. These "fundamental questions of public importance" involved the eligibility of the Counsel appearing for one of the parties in the case. The trial court formulated the "fundamental questions of public importance" well after the Settlement of Issues, the recording of evidence and at the stage of final arguments. The learned Division Bench made the following observations regarding the jurisdiction of the trial court to take up "fundamental questions of public importance" during trial proceedings:

"Examining the eligibility of the appellant to appear before this Court as an Advocate in the subject suit between two private parties, would amount to changing the complexion of the suit altogether which is not permissible under law. In view of hereinabove facts and circumstances of the case, we are of the considered opinion that the learned Single Judge was not justified either in facts or in law to formulate the aforesaid questions relating to eligibility of the appellant to appear as an Advocate before this Court, in these proceedings, and thus travelled beyond the jurisdiction and the authority as vesting in Court while hearing a suit between two private parties, in which the appellant was not even a party."

Finally, the learned Division Bench issued directions to the learned Single Judge to proceed to decide the Suit as per pleadings on merits, in accordance with law, and set aside the Order(s) in relation to "fundamental questions of public importance".

The Rasheed A. Razvi case (supra) appears relevant to the facts and circumstances of the case in hand, particularly whether or not this bench should issue notice of CMA No.21367/2021 in this Suit. The subject matter of this suit involves a dispute between a student and her university. In the year 2016, when

the Plaintiff student filed her suit, she was a student at the Defendant University. At present, she has graduated. Her claim, as framed in the suit seeking several reliefs, including an award of damages in the sum of Rs.50 million against the Defendant, remains in place. It is her case to prove, and there is some time to go before trial proceedings are concluded. Recording of evidence of Defendants is yet to commence. The final arguments are still distant. It does not appear to be in either party's interest, Plaintiff or Defendant, to keep this suit ongoing. Better sense demands unnecessary procedural side-trips examining "fundamental questions of public importance" are deferred. At present, the more important matter for this bench is to decide the suit. Earlier, to expedite matters, this Court had ordered the recording of evidence by the Commissioner for Recording Evidence. Proceedings did not unfold as expected. Instead, Counsels are embroiled in "fundamental questions of public importance". Trial proceedings have been stalled. Notwithstanding, Defendant's Counsel's "fundamental questions of public importance" are indeed important; the focus, with CMA No.21367/2021, appears to have shifted from the parties to other items. This bench's first responsibility is to the parties, the Plaintiffs and Defendants, to conclude this trial efficiently and effectively. This is one reason why this bench is minded to issue a notice of CMA No.21367/2021.

Defendant Counsel filed CP No.D-6483/2021 in October 2021. According to Plaintiff's Counsel, he has notice of the same. Yet, almost two years later, no further developments have taken place. It is entirely unknown how much more time will be consumed in the writ proceedings, including in appeals to the Court of Last Resort. If this Court stays the trial proceedings until the decision of CP No.D-6483/2021, then the private litigants (assuming they continue to retain present Counsels) will have to wait to re-start their case until "fundamental questions of public importance" are decided completely. In the circumstances, deferring hearings and proceedings on the trial side runs contrary to the spirit of dispensing justice. This is yet another reason why the bench is constrained to issue notice of CMA No.21367/2021.

The Division Bench in Rasheed A. Razvi case (supra) has observed that the trial is a matter between parties and not between Plaintiff's Counsel and the parties. Issuing notice of CMA No.21367/2021 begs the question of who will file the counter-affidavit. The affidavit supporting CMA No.21367/2021 raises serious allegations against not the Plaintiff but the Plaintiff's Counsel. The Plaintiff's Counsel is not impleaded in the suit. Surely, he cannot be expected to file a Counter-Affidavit. The Division Bench clearly identified this situation and has opined in the Rasheed A. Razvi case (supra) that the trial court is not the proper forum to settle "fundamental questions of public importance". This is why the

Division Bench ordered the trial court to proceed with the trial and decide the Suit as per pleadings on merits, in accordance with law. This is yet another reason for this Court not to issue notice of CMA No.21367/2021 and move to proceed with the trial and decide the Suit as per pleadings on merits, in accordance with law.

There is yet another reason for this bench to be minded about issuing notice of CMA No.21367/2021. The Pakistan Bar Council [the Regulator] has neither cancelled nor suspended the licence of the Plaintiff's Counsel. No orders have been placed before this bench in support of cancellation or suspension of the Plaintiff's Counsel license to practice.

For the above reasons, CMA No.21367/2021 is hereby dismissed.

It is clarified that the observations made herein pertain to and are confined to providing a background to decide CMA No.21367/2021 and are without prejudice to parties' claims and defence in the main suit and/or any future interlocutory proceedings.

Order accordingly.

J U D G E

Ashraf