

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

H.C.A. No.61 of 2024

Date	Order with signature of Judge
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1. For orders on CMA 1151/24
2. For orders on CMA 413/24
3. For orders on CMA 414/24
4. For hearing of main case.
5. For orders on CMA 415/24

**Dated: 17.05.2024**

M/s Rehan Kayani, Ahmed Masood and Muhammad Altaf, advocates for the appellant along with appellant Furqan Ahmed Shaikh in person.

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This matter was taken up on the last date i.e. 14.05.2024. We noticed a contemptuous ground which brought to the notice of Mr. Rehan Kayani Advocate who was pleading the case. When we found that the intention of the counsel was not to surrender we issued contempt notices and reminded him of the fact that this is not permissible in terms of Order VI Rule 16 CPC read with Rule 59 of Sindh Chief Court Rules (OS). For convenience the same are reproduced as under:-

**“ORDER VI CPC**

1 ...

*16. Striking out pleadings.—The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.*

**Sindh Chief Court Rules (OS)**

*59. Scandalous matters. The Court may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between advocate and client.”*

In response to such notices today M/s Rehan Kayani, Ahmed Masood and Muhammad Altaf have appeared along with appellant Furqan Ahmed Shaikh with an application under order VI rule 17 CPC that they

intend to delete ground “E” from the memo of appeal and the corresponding paragraph 18 from the affidavit to CMA 415/2024. They however in response to the contempt notices have not filed any affidavit of being apologetic or otherwise. When we confronted such situation that it calls for framing of charge, counsel then realized and attempted oral apology, we refused such oral apologies. They then requested for half an hour to file the affidavits seeking written apologies for writing contemptuous, scandalous and abusive language and unnecessary facts. We kept the matter a side for half an hour and was taken up again. The affidavits of the counsels and the appellant placed before us and we have taken them on record.

The judgments are not immune from criticism but the institutions and personalities of those who authored judgments/orders cannot be subjected to such scandalous, abusive, contemptuous intent and offensive language to settle score against judicial pronouncements and specially to make it part of pleadings/grounds in support of their appeal in an attempt to assail judgments/orders.

We have also noticed that at times situation is exasperated to have recusal order from the Bench which could be a hidden intent but such intents should not be materialized; exasperation should not lead to recusal. We are indebted to the institution and will save and guard its respect. Notwithstanding tender of unconditional apology the contemnors must feel the pain of their arrogant attitude and should not get away simply by tendering an affidavit of apology; one can get erratic delivering extempore emotional speech but this exception is not available to the one who dictate pleadings relatively with settled mind.

In the case of M. Y.Shareef (1995 AIR 19) equivalent citations: 1955 SCR (1) 757, AIR 1955 SC 19, 57 PUN L R 198, the bench in order to make it known to all concerned ordered that:

***“It should be widely made known that an advocate who signs an application or pleading containing matter scandalizing the Court which tends to prevent or delay the course of justice is himself guilty of contempt of Court unless he reasonably satisfies himself about the prima facie existence of adequate grounds there for and that it is no duty of an advocate to his client to take any interest in such applications ; on the other hand, his duty is to advise his client for refraining from making allegations of this nature in such applications.”***

The other case that finds its relevance is of Amar Sadhuram Mulchandani v. Director of Enforcement (Cr. Writ Petition No.612 of 2023) which in fact was a bench in the High Court of Judicature at Bombay, Criminal Appellate Jurisdiction. The Bench observed as under:-

8. *As the aforesaid conduct of both these lawyers is found to be scandalizing the Courts and creating an artificial situation of prevailing upon the Judges not to take up the matters which amount to contempt, this Court pointed out the judgment of the Hon’ble Apex Court in M.Y. Shareef & Another Versus The Hon’ble Judges of the High Court of Nagpur & Others [1955 SCR (1) 757]. The lawyers accordingly have tendered their unconditional apology by filing their respective affidavits.*

9. *However we must record the conduct of the lawyers. When it was enquired with the Registry as to who has submitted the praecipe, it was informed that both these lawyers have submitted the praecipe and that time the Registry had advised them to refrain from doing so. After some time both these lawyers came back and insisted the Registry to accept the praecipe. Apart from above, the very tenor of lawyer Ms Minal Jaiwant Chandnani while conducting the matter on the earlier date depicts that she had no respect and regard for the Court proceedings. The said lawyer has tried to substantiate what has been stated in the praecipe submitted by Advocate Zoheb Merchant who is claimed to be working under her.*

10. *The fact remains that the aforesaid attempt on the part of the respondent no.5 of having an order of placing the matter before any other Bench is with mala fide intention thereby scandalizing the Courts and the Judges as could be inferred from the contents of the praecipe as well as the news article annexed with the said praecipe.*

11. *We deem it appropriate not to refer to the contents of the news article in detail. The option as such open to the Judges comprising the Bench is either to recuse themselves from hearing the matter or to continue with the same ignoring the accusations.*

12. *The Judges of the Bench are expected to decide the disputes brought before them free from any personal bias or prejudice. The parties like the aforesaid lawyers and the litigants to whom they represent create an*

*artificial perception that by scandalizing the Courts and the Judges they can secure a order of recusal. In such an eventuality, we are of the view that the lawyers and the litigants who exhibit such behavior are required to be dealt with an iron hand by taking stern action. This Court has apprised the above referred lawyers so also the respondent no.5 whom they represent about the law laid down by the Hon'ble Apex Court in M.Y. Shareef & Another (supra).*

*The Hon'ble Apex Court has held that a section of the Bar seems to be labouring under an erroneous impression that when an advocate is acting in the interests of his client or in accordance with his instructions, he is discharging his legitimate duty towards his client even when he signs an application or pleading which contains matter scandalizing the Court and that when there is conflict between his obligations to the Court and his duty to the client, what prevails first is his obligation to the Court. An advocate, who signs an application or pleading containing matter scandalizing the Court so as to have an order of recusal or such similar order, he can be held guilty for the contempt of Court unless there is a reasonable satisfaction by him about existence of adequate grounds. It is the duty of the advocates to advise their clients to refrain from making allegations of such nature.*

We have realized the overall situation; all counsels even today despite receipt of contempt notice approached the rostrum without apology as if they have no regard and sanctity of the contempt notice or no remorse to what has been written in the relevant paragraph of the appeal. However, after some debate Mr. Ahmed Masood stepped forward, as noted above, and requested for time which was granted whereafter unconditional apologies were filed. We have reassessed the matter now since written apologies have been filed. The advocates are young and upcoming lawyers and apparently have faced these contemptuous proceedings for the first time hence we accept their apologies however with the condition that a sum of Rs.500,000/- (five lacs) jointly and severally be deposited with the High Court Judges Library within one week from today. The lawyers should be careful in future.

As far as the merit of the case is concerned, we now take up the matter with the listed applications.

(CMA No. 1151/2024) We have heard the learned counsel on this application. He is directed to file amended memo of appeal after deleting the ground “E” incorporated in the earlier memo of appeal and also file amended CMA 415/2024 which reproduces this ground ‘E’ in para 18 of the affidavit. The office is to be careful that whenever notices are issued in respect of this appeal it is only the amended memo of appeal and the amended CMA 415/2024 that may be sent along with the notices.

CMA No.413/2024

The Court fee appears to have already been deposited. The application as such is disposed of.

CMA No.414/2024

Exemption granted subject to all just exceptions.

For hearing of main case and CMA 415/2024

Mr. Rehan Kiyani, learned counsel has appraised us with the facts of the case to demonstrate the applicability of Article 113 of the Limitation Act. He submits that time was not essence of the contract in terms of the pronouncements of the Hon’ble Supreme Court as it would be counted from the date of the denial hence it was not a time barred suit. Notice to the respondents as well as AG Sindh. Learned counsel submits that they have paid Rs.7.8 Million being 10% of the total sale consideration that is 78 Million. Let balance amount be deposited in 10 days’ time with the Nazir of this Court which shall be invested in best profitable scheme. Till the next date status quo be maintained.

Be fixed after two weeks.

**Judge**

**Judge**