

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
**Revision Application No. 128 of 2022**

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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**05-08-2024**

For Orders on Office Objections  
For Hearing of CMA No.1267/2022 (u/s 75 CPC)  
For Hearing of Main Case

Ms. Samina Ajmaree, Advocate for Applicant  
Mr. Allah Bachayo Soomro, Additional Advocate General Sindh

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**ORDER**

1. **Sana Akram Minhas J:** The office has objected to the maintainability of the current Revision Application, on the ground that the remedy of filing a First Appeal is available to the Applicant. This order addresses the aforesaid office objection only.
2. The instant Revision Application (presented on 27.5.2022) impugns a judgment and decree dated 19.5.2022 of the learned 1<sup>st</sup> Additional District Judge, Kotri passed in Summary Suit No.15/2021, whereby the Leave to Defend application of the Applicant (Defendant in Summary Suit below) was dismissed and the Summary Suit instituted by the Respondent No.1 (Plaintiff in Summary Suit below) under Order 37 of the *Code of Civil Procedure, 1908* (“**CPC**”) was decreed.
3. The learned Counsel for the Applicant was queried why a First Appeal under section 96 CPC was not preferred. Counsel submits that since the impugned judgment uses the word “ORDER” in the heading, this has led the Applicant to file the present Revision Application. She averred that the provisions of section 96 CPC apply only to appeals from original decrees and not to orders. On the other hand, the learned AAG has challenged the maintainability of this Revision Application and has called for its dismissal due to the Applicant’s failure to invoke the appropriate remedy of a First Appeal.
4. While the impugned judgment no doubt uses the caption “ORDER”, however, a cursory glance at its contents, in particular its last paragraph

No.8, leaves no room for any doubt that it is a judgment which has been followed by a decree.

5. Section 115(1) CPC stipulates that:

“ Revision: (1) *The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court **and in which no appeal lies thereto**, ... ..*  
...”

**[Emphasis Added]**

Thus, a Revision can be filed before the High Court under section 115(1) CPC or before the District Court under section 115(2) CPC in cases where no appeal is permitted.

6. According to section 96 CPC, an appeal shall lie against every decree issued by any court exercising original jurisdiction, to the court authorized to hear such appeals<sup>1</sup>. There is a clear distinction between the two types of appellate jurisdictions provided under the CPC. Under section 96, the Appellate Court has the authority to re-examine questions of fact. However, in the case of a Second Appeal under section 100, the High Court's jurisdiction is limited to questions of law. The High Court cannot interfere with the factual findings of the first Appellate Court unless those findings are erroneous, defective, or result in a miscarriage of justice. The High Court is not permitted to reassess the evidence or conduct a roving inquiry into the facts to overturn the first Appellate Court's conclusions<sup>2</sup>.
7. The Supreme Court<sup>3</sup> has also underscored that a revision under section 115 CPC is not permissible if the remedy of an appeal is available under sections 96 or 100 CPC, irrespective of whether the appeal is made directly to the High Court or after an initial appeal to the District Judge. The word “appeal” includes both the First and Second Appeals.
8. Consequently, given the above, the Applicant ought to have filed a First Appeal under section 96 CPC instead of a Revision Application under section 115 CPC.
9. However, this Court retains the inherent power to convert one form of proceeding to another<sup>4</sup>. Therefore, considering that the First Appeal was not

<sup>1</sup> 2013 CLC 1763 (*Muhammad Tariq Mansoori v. Abdul Ghani Mansoori*)

<sup>2</sup> 2023 SCMR 1652 (*Muzafar Iqbal v. Riffat Parveen*)

<sup>3</sup> PLD 1970 SC 506 (*Municipal Committee Bahawalpur v. Aziz Elahi*); 1993 SCMR 1955 (*Faqir Muhammad v. Muhammad Din*)

<sup>4</sup> 1982 SCMR 494 (*Safia Bibi v. Aisha Bibi*); PLD 1993 SC 109 (*Pakistan Fisheries Ltd v. United Bank Ltd*); 1994 SCMR 1555 (*Jane Margrete William v. Abdul Hamid Mian*); 2014 CLD 1548 = 2015 CLC 1734 (*Asif Kudia v. KASB Bank Limited*); 2017 SCMR 56 (*Muhammad Akram v. DCO Rahim Yar Khan*); 2019 SCMR 2018 (*Al-Khair Gadoon Ltd v. The Appellate Tribunal*)

time-barred when the present Revision Application was filed by the Applicant, accordingly, I hereby convert this Revision to a First Appeal and permit the Applicant (henceforth the Appellant) to file an amended Memo of Appeal in line with Order 41 rules 1 & 2 CPC.

10. Subject to compliance of the remaining office objections and the filing of an amended Memo of Appeal as aforesaid, issue notice to the private Respondent No.1 on the main case and CMA No.1267/2022 for a date to be fixed by the office.

**J U D G E**