

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**IInd Appeal No. 22 of 2016**

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Date	Order With Signature Of Judge
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- 1.For order on CMA No.2805/19
  - 2.For order on office objection
  - 3.For hg of main case
  - 4.For hg of CMA No.912/16
- 19.08.2024.

Syed Sikandar, advocate for the appellant.  
Ms. Naeema Siddiq, advocate for respondent No.6.  
Mr. Meeran Muhammad Shah, Addl. Advocate General.

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**J U D G M E N T**

**MUHAMMAD IQBAL KALHORO, J:-** Appellant was granted a license to sell the liquor in the year 1991 by respondent Nos. 2 to 4. Subsequently, he made respondents No. 6 and 7 as his partners in the year 1998 as per Partnership Deed dated 21.08.1998. In terms of the said deed respondent No. 6 was entitled to 75% share and respondent No. 7 was entitled to 20% share, whereas, appellant was entitled to 5% share being a sleeping partner. The business was being run by respondents No.6 and 7 on the spot. The appellant was residing permanently in United Kingdom. He returned to Pakistan on 16.11.2014 and asked for his share from the profits earned by respondents No. 6 and 7. When they failed to give him share or produce an excuse to deny the same, he served them a legal notice but in vain.

2. Finally, he filed a suit for declaration, permanent injunction, rendition of accounts, mesne profit and dissolution of partnership. The suit was decided by Senior Civil Judge (ii) Karachi-East, vide judgment dated 06.10.2021, whereby on the basis of evidence, he granted appellant 5% profit from 2012, on the basis of calculation of limitation of 03 years, up to dissolution of partnership deed through a notice under section 43 of Partnership Act, 1932 dated 07.01.2015. In addition, the trial Court referred the matter of liquor license of the appellant to

respondents No. 2 to 4 for deciding it afresh observing that the partnership between the appellant and respondents No. 6 and 7 had been dissolved.

3. The appellant and respondents No. 6 and 7 filed separate appeals. Appellant was aggrieved by the observation, whereby the issue of license of liquor in his favour was referred to respondents No.2 to 4 for reconsideration, whereas, respondents No. 6 and 7 were aggrieved by 5% amount of profit from the profit of Rs.100,000/- per month earned by them and evident from this evidence, to the appellant.

4. Both the appeals have been decided by learned Appellate Court vide impugned judgment dated 14.12.2021. The appeal of the respondents has been allowed and the appeal filed by the appellant has been dismissed.

5. With the assistance of learned counsel for the parties and learned AAG, I have gone through the impugned judgment. It is admitted by all present that there are no observations or findings insofar as the appeal of the appellant against referring the issue of his license to respondents No. 2 to 4 by the trial court is concerned. Although the appeal filed by the appellant was essentially against such observations on the ground that the issue of license granted in favour of the appellant was not disputed in the suit. Nor even the trial court had framed issue, hence the findings were totally uncalled for.

6. Further, the suit of the appellant for 5% share in profits has been dismissed by the Appellate Court on the basis of observation that at the time when the suit was filed, the appellant was not present in Pakistan as no evidence in such connection showing his entry into or exist from Pakistan, passport and other documents, has come on the record.

7. Learned counsel for the appellant has referred to the affidavit-in-evidence of the appellant and documents filed by him, which *prima facie* shows that these documents were filed by the appellant in his

affidavit-in-evidence but learned Appellate Court while deciding the appeal has completely ignored such record and based his findings on hypothesis and presumptions.

8. Therefore, both the parties have agreed that since impugned judgment is a result of non-appreciation and mis-appreciation of evidence insofar as the appeal filed by respondents No. 6 and 7 is concerned. And there are no findings insofar as the appeal filed by the appellant is concerned, the same may be set aside and remanded to the Appellate Court with the direction to decide both the appeals afresh after hearing the parties. I concur with such proposition and allow this appeal in the terms whereby the impugned judgment is set aside and the case is remanded back to the Appellate Court. The Civil Appeals No.202 and 212 of 2021 would stand revived. The Appellate Court is directed to hear the parties afresh and go through the record properly and pass judgment in accordance with law within a period of three months dispose of both the appeals.

The appeal is disposed of.

JUDGE

HANIF