

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-1807 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before:

Mr. Justice Muhammad Faisal Kamal Alam
Mr. Justice Yousuf Ali Sayeed

For orders on office objection
For hearing of M.A. 10685/2023
For hearing of main case

17.10.2024

Mr. Muhammad Hanif Shaikh Advocate for Petitioners.
Mr. Muhammad Arshad S. Pathan along with Mr. Safdar Hussain
Laghari his associate, Advocate for Private Respondents.
Mr. Allah Bachayo Soomro, Addl. AG Sindh.

ORDER

MUHAMMAD FAISAL KAMAL ALAM, J.-. This Petition is filed challenging the Order passed in Civil Revision No.16/2023, which has maintained the Order of the learned Trial Court, dismissing the Application filed under Order IX Rule 7 of CPC (for filing of Written Statement) in F.C. Suit No.101 of 2021 filed by the Respondent No.1.

Learned Counsel for the Petitioners contended that the Petitioners kept in dark about the proceedings and one of the Defendants, viz. present Petitioner No.1 was under medical treatment. He states that a fair opportunity be given to Petitioners to defend the above Suit for Specific Performance.

Mr. Muhammad Arshad S. Pathan, Advocate for Private Respondent, has vehemently opposed this petition, *inter alia*, on the ground that fair opportunity is provided to Petitioners when their present Advocate has even cross-examined the witnesses of Plaintiffs. The second objection is, that even the above Application for filing of Written Statement (at page 51 of the Petition) and recalling the Order dated 27-08-2022, that debarred the Petitioners from filing the same, is accompanied by the personal Affidavit of Mr. Muhammad Hanif Shaikh Advocate and not of his Clients, that is, the Petitioners.

Learned AAG has also opposed this Petition on the above grounds.

Arguments heard. Record perused.

The impugned Judgment passed in Revision has discussed each and every aspect of the case, including, that the Application under Order IX Rule 7 of CPC should have been filed by any of the Petitioners so also has given a determination that even after due Notice of the above Suit proceeding, the Petitioners (Defendants) failed to appear and hence the Order was passed, debarring them from filing Written Statement. Page 171 is the deposition which shows that the present Counsel has cross-examined the Plaintiffs' witnesses, which means, in the given circumstances, a fair opportunity is given to the Petitioners.

The Trial Court in its concluding paragraphs has discussed the rival contentions, while observing that no proof was filed about the medical treatment of one of the Defendants [Petitioners], which is one of the main grounds of the above Application under Order IX, Rule 7 of CPC.

It is not disputed that case is now at the stage of final arguments. No illegality or irregularity exist in the impugned Decisions, requiring correction or interference in the present Proceeding. Consequently this Petition is dismissed.

JUDGE

JUDGE