

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1041 of 2008

Date

Order with signature of Judge

For further orders on CMA Nos:

1. 2636 of 2013 (U/S 151 CPC)

2. 1762 of 2012 (U/S 151 CPC)

(Notice of CMA Nos.2636/2013 and 1762 not issued as cost not paid nor copies supplied since 23.5.2013)

3. For further orders on CMA No.1270 9/2012

(U/O 1 R 10 CPC)

(Notice of CMA No.12709/2012 not issued as cost not paid nor copies supplied since 03.12.2012)

For hearing of CMA Nos:

4. 7556 of 2008 (U/O 39 R 1&2 CPC)

5. 7557 of 2008 (U/O 39 R 1&2 CPC)

6. For final disposal as per Court's order dated 26.11.2012.

(Attention is respectfully invited to the Court's order dated 20.12.2012 as flagged 'A' office note dated 28.11.2012).

(A/w evidence file)

06/09/2013:

Mr. H. A. Rehmani, Advocate for the plaintiff.

Syed Khizar Asker Zaidi, AAG for Defendants No.4 & 6.

Mr. Shahid Iqbal Rana, Advocate for Defendant No.5.

None present for Defendants No.1 to 3 and applicant/intervenor.

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3. Learned counsel for the plaintiff states at the bar that this application (CMA No.12709 of 2012) is repetition of identical application filed earlier by the same applicant/intervenor bearing CMA No.12217 of 2010) and by order dated 20.2.2012 the said application was dismissed as not pressed, therefore this application (CMA No. 12709 of 2012) is hit by the law of resjudicata. Even otherwise, perusal of the application in hand clearly indicates that this application is not maintainable since in para 1 of the application the applicant/intervenor alleges that he is

attorney of Defendant No.1 and in para 2 he says that Defendant No.1 has been passed away. It is strange that the attorney claims to be an attorney even after the death of the principal. On this classic pleading, too, this application is liable to be dismissed. Today neither the applicant/intervenor nor his counsel is present and on 28.8.2013 the case was adjourned at the request of Mr. Tariq Mehmood, learned counsel for the applicant/intervenor, but he is called absent. In these circumstances the application (CMA No.12709 of 2012) is dismissed.

1&2. Both these applications are dismissed for non-prosecution as neither cost has been paid for issuance of notice nor copies supplied. Even otherwise, since the main application (CMA No.12709 of 2012) of the applicant/intervenor filed under Order 1 Rule 10 CPC has been dismissed these applications have become infructuous.

4&5. These two applications (CMA Nos.7556 of 2008 and 7557 of 2008) filed by the plaintiff against Defendants No.2 to 4 under Order 39 Rules 1 & 2 CPC are pending since 2008. In this case the Defendants No.1 and 2 were declared exparte on 17.1.2011 while Defendants No.3 to 6 were debarred on 8.12.2009 and there is no contest. These applications are allowed as prayed.

6. Deferred.

The examination of file reveals that there is another application (CMA NO.9757 of 2008) which was filed by the plaintiff in 2008 and it is pending but it is not fixed for hearing today. This application is taken-up for hearing. Learned counsel for the plaintiff says that this application has become infructuous. It is dismissed having become infructuous. Order accordingly.

Adjourned to a date in office.

JUDGE

S. Akhtar