

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 233 of 2010

Date	Order with signature of Judge
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1. For hearing of CMA No.10977/2012 (U/S 151 CPC)
2. For hearing of Nazir's report dated 5.6.2012.
(Reply dated 15.11.2012, of the Nazir's may kindly be perused at flag "A")

06/11/2013:

M/s. Noor Naz Agha and Meerza Shaheryar Khan
Advocates alongwith the plaintiff.

Mrs. Shabana Ishaque, Advocate for Defendant No.1.

This is an application (CMA No.10977 of 2012) filed by the counsel for the defendants and the main grievance in this application is that Nazir of this Court on 16.05.2012 has closed the side of defendants for cross-examine the witness of the plaintiff. There are certain allegations against the Nazir and even a complaint has also been filed against the Nazir who was recording evidence of the parties. The only grievance of the plaintiff is that by deliberate or otherwise failure to cross-examine the witness of the plaintiff, the plaintiff has suffered not only on account of delay but also financially as that witness has to come from Sialkot. In fact, Nazir being Commissioner for recording evidence was not supposed to close the side but he was supposed to make reference to the Court giving the details of the conduct of the parties if he had grievance or otherwise on failure of completing the evidence by him instead of closing the side. The Nazir order of closing the side of defendants to cross-examine the witness of plaintiff appears to be in excess of authority for recording of evidence. Therefore, on legal

plea the Defendant No.1 is entitled for setting aside the order for closing the side of plaintiff to cross-examine the plaintiff's witness.

This is a suit for administration and only two issues have been framed on which no lengthy cross-examination is supposed to have been made. However, since the order of closing the side of defendants to cross-examine the plaintiff's witness has been set aside and the Nazir against whom complaint has been filed by the defendants has been transferred, the parties have no objection to appear before the new Nazir and complete the proceedings. Since the matter has been delayed for about six months for the purpose of cross-examination, irrespective of the circumstances in which delay has taken place on account of the fact that the witness of plaintiff is coming from Sialkot, the defendant No.1 side for cross-examination is reopened subject to payment of cost of Rs.10,000/- to be paid Defendant No.1.

CMA No.10977 of 2012 is disposed of in the above terms

JUDGE

S.Akhtar