

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 330 of 2008

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Date	Order with signature of Judge
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For hearing of CMA No.4940/2010 (U/S 75 CPC).

20/11/2013:

Mr. Muhammad Najeeb Jamali, Advocate for the  
plaintiffs.

Mr. Mahmood Ahmed Khan, Advocate for Defendants  
No.1 to 5.

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Learned counsel for Defendants No.1 to 5 on 14.10.2013 requested for time and then on 24.10.2013 informed the Court that he would be filing an application under Rule 50 of Sindh Chief Court Rules (O.S) for discharge of his Vakalatnama. Today he is present in Court and suggests that Court should sent notice directly to his clients. Unfortunately there is no provision in law to allow the Court to issue fresh notice to the defendants who have already been represented by a counsel for last five years. This application (CMA No.4940 of 2010) is for appointment of a commissioner to record evidence of the parties is pending since 2010. The defendants' counsel was on the notice of this application for last three years. Even otherwise the application for appointment of a commissioner is formal. Once the issues are framed there is no need to get consent from the counsel of the parties for appointment of Commissioner. In the circumstances to arrest further delay in this case Syed Kausar Ali Bukhari, former District and Sessions Judge, having office at Suite No.52, 4<sup>th</sup> Floor, Fareed Chambers, Abdullah Haroon Road, Saddar, Karachi,

bearing Cell # 0300-2495104, is appointed Commissioner for recording of evidence of the parties. Learned counsel for the plaintiffs informs that he has already filed list of witnesses and documents. He is directed to file affidavits-in-evidence of his all three witnesses before the Commissioner on 15<sup>th</sup> December 2013 alongwith the pleadings of the parties. It is also clarified that the counsel for the defendants present in Court and I believe through him the defendants will also come to know that they have to appear before the learned Commissioner for the purpose of cross-examination of the witnesses of plaintiff. The fee of the learned Commissioner will be Rs.10,000/- per witness which will be paid by the parties whose witness is to be examined. The fee will be paid in advance. The learned Commissioner is also directed to ensure that the parties should not be allowed to file any documents which is outside the pleadings as well as which have not been mentioned in the list of documents. However, if any party insist and try to place some documents he may keep the same on record under objection and continue with the evidence and such objection will be decided before final hearing of the case after conclusion of evidence. The learned Commissioner to complete the commission within a period of three months from 15.12.2013.

In view of above CMA No.4940 of 2010 is disposed of.

S.Akhtar

JUDGE