

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.642 of 2009

Order with signature of Judge

1. For hearing of CMA No.797/2012.
2. For hearing of CMA No.6276/2009.
3. For hearing of CMA No.11409/2011.
4. For hearing of CMA No.6453/2011.
5. For hearing of CMA No.6454/2011.
6. For hearing of CMA No.10592/2009.
7. For hearing of CMA No.10613/2010.
8. For hearing of CMA No.7438/2009.
9. For hearing of CMA No.4665/2009.
10. For hearing of CMA No.8487/2009.
11. For hearing of CMA No.10612/2010.
12. For hearing of CMA No.12381/2011.

14.02.2014.

Mr. Muhammad Mushaffay, advocate for the Plaintiff.
Mr. Saleem Iqbal, advocate for the Defendants No.5 to 9.

1,2&6. Dismissed, as the Suit for damages cannot be hit by Provisions of Order VII Rule 11 CPC. The issue of damages can only be decided after recording of evidence. According to the learned counsel for the Defendant No.3, the instant Suit is not maintainable and hit by Rule 11 of the Cooperative Societies (Reforms) Order 1972, which is not relevant.

3,4&5. Through these applications, the Defendants No.3, 5 and 7 to 9 have sought condonation of delay of filing of the written statement. All these three applications fixed today are not maintainable, since one application has been filed under the Limitation Act, 1908, which does not apply for condonation of delay in filing of the written statement by the Defendants. Similarly, the Provisions of Order IX Rule 6 CPC is not relevant. The application can only be filed under Rule 159 of the Sindh

Chief Court Rules. None of these applications in which condonation is prayed for has offered any plausible justification. It is contended that one of the Defendants was indisposed and he was not available at the relevant time to file the written statement. Be that as it may, without touching the merits, the condonation of delay in filing written statement is allowed subject to the payment of cost of Rs.25,000/-, which means that each of the Defendants is liable to pay Rs.5,000/- to the Plaintiff within one week's time, otherwise their written statement will not be considered and the matter will continue to be proceeded ex-parte. These applications are disposed off accordingly.

7,8,9&10. These applications are dismissed as not pressed, as no injunction can be granted during pendency of the Suit for damages.

11&12. Deferred, as these applications are about Contempt of Court and the learned counsel for the alleged Contemnors is not present in Court.

In view of the fact, following Issues are framed by the Court:-

- I. Whether the Plaintiff has suffered losses of name, reputation and other losses on account of letter issued by the Defendants dated 17.02.2009 and consequent thereof action taken by the Department on 19.02.2009? If yes.
- II. What should be the quantum of damages, if any?
- III. What should the Decree be?

If the written statement of the Defendants is taken on record subject to the above observations, the Defendants will be allowed to lead evidence on their behalf. In such eventuality, the evidence is to be

recorded by learned Commissioner and Syed Kausar Ali Bukhari, (Retd) District & Sessions Judge is appointed as Commissioner for recording of the evidence. The fee of the learned Commissioner is fixed at Rs.10,000/- per witness to be borne by the respective Parties. Learned Commissioner should start recording of evidence from 29.03.2014 onwards subject to the contest on payment of cost for taking the written statement on record otherwise this case will proceed ex-parte against the Defendants. The Plaintiff has already filed affidavit-in-exparte proof.

Adjourned to a date in office.

JUDGE

MUBASHIR