

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.B-60 of 2001

Order with signature of Judge

For hearing of CMA No.7954/2007.

18.02.2014.

Mr. Nabeel Kulachi, advocate for the Plaintiff.

Mr. Ahmed Ali Ghumro, advocate for the Defendants No.3 to 8.

This CMA No.7954/2007 has been filed by the learned counsel for the Defendants No.3 to 8. The date of presentation of this application is 15.09.2007. Today, this matter was called in the morning, but due to absence of the learned counsel for the Defendants No.3 to 8, the same was kept aside. After Tea-Break, Mr. Ahmed Ali Ghumro, learned counsel for the Defendants No.3 to 8, appeared and requested for adjournment, as he is not prepared to proceed with this application.

In my humble view, this is not the sufficient ground to adjourn the matter. Failure of the learned counsel for the Defendants No.3 to 8 that he is not prepared to proceed with the application listed today, which is pending since 2007, cannot be condoned without sufficient cause and therefore, his request for adjournment simpliciter is turned down.

This is an application of seven (7) pages alongwith the supporting affidavit is supported with a number of documents as Annexures "A" to "H". The Annexures clearly indicate that this application is on the basis of certain documents. The documents filed alongwith the application under Order VII Rule 11 CPC unless being found admissible under the

Evidence Act and cannot be examined for invoking the jurisdiction of this Court under Order VII Rule 11 CPC.

The record shows that consent Issues were framed by this Court on 24.03.2006 and even Examination-in-Chief of the Plaintiff was recorded on 07.03.2007. Thereafter the learned counsel for the Defendants No.3 to 8 has never offered to cross-examine the Plaintiff's witness despite recording of the Examination-in-Chief of the Plaintiff.

Learned counsel for the Plaintiff has drawn attention of this Court to the order dated 13.12.2005 whereby learned counsel for the Defendants No.3 to 8 did not press the CMA No.1313/2005, which was an application for deleting the name of the Defendants No.3 to 8. Earlier application bearing CMA No.1094/2005 under Order VII Rule 11 CPC was also filed but it was never pressed by the learned counsel for the Defendants No.3 to 8, as the record does not show that the said application was listed after 30.09.2005.

The present application is second in line and this application was dismissed and restored two times since 2007. The record shows that this application was firstly dismissed for non-prosecution on 24.01.2008 and restored on 23.04.2008. Again this application was dismissed for non-prosecution on 31.10.2012 and restored on 21.02.2013.

This checkered history of the application under Order VII Rule 11 CPC clearly indicates that the learned counsel for the Defendants No.3 to 8 is not interested to contest this application on merits under the garb of this application, he has not cross-examined the witness of the Plaintiff since 07.03.2007.

In view of the above facts and circumstances, this application is dismissed.

The Examination-in-Chief of the Plaintiff has already been recorded. Learned counsel for the Defendants No.3 to 8 is directed to obtain true certified copies of the Examination-in-Chief of the Plaintiff and be prepared to cross-examine the witness of the Plaintiff on 08.03.2014 before the learned Commission. Syed Kausar Ali Bukhari, (Retd) District & Sessions Judge having Office at Room No.52, 4th Floor, Fareed Chambers, Abdullah Haroon Road, Saddar, Karachi is hereby appointed as Commissioner to record evidence of the Parties. Learned Commissioner's Fee is fixed at Rs.10,000/- per witness to be borne by the Parties, who wish to produce witness. The Plaintiff is directed to produce his witness before the learned Commissioner on 08.03.2014 at 1.30 a.m. in the Consultation Room of the High Court and on which date, learned counsel for the Defendants No.3 to 8 is expected that he should cross-examine the witness. Learned Commissioner is directed to examine the witness on that date and if the case is to be adjourned on account of occupies of Commissioner with some other case, he may give only one date of his choice. The learned counsel for the Defendants No.3 to 8 is directed to cross-examine the witness of the Plaintiff on that date. Learned Commissioner is also directed that the next date should not be beyond 15 days' time from 08.03.2014 and the evidence of Plaintiff should be concluded on or before 18.04.2014 with the consent of the Parties. In case of failure of the Defendants or the Plaintiff in concluding the evidence, learned Commissioner should submit his report instantly with an Urgent Application so that either party is found in default should

be taken to task either by closing the side or declared the cross Nil, which will be depended upon the learned Commissioner's Report. Once the Plaintiff's witness cross-examined, within next one week, the learned counsel for the Defendants No.3 to 8 should file his evidence through Affidavit-in-Evidence within 15 days and the learned counsel for the Plaintiff should be present to cross-examine the witness of the Defendants. The Commissioner should submit his Report on or before 18.05.2014 positively. Adjourned to a date in office. To come up after recording of the evidence of the Parties.

JUDGE

MUBASHIR