

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.1635 of 1998

Order with signature of Judge

For orders on CMA No.11620/2013 (U/s. 151 CPC)

03.03.2014.

Mr. Bahzad Haider, Advocate for the Plaintiff.
Raja Qasit Nawaz, Advocate for the Defendants No.1 & 2.

The record shows that Plaintiff has never been interested in recording of evidence. In this case issues were framed on 31.1.2000, thereafter several Commissioners for recording of evidence were appointed by consent of the parties. On 20.8.2006 one Mr. Muhammad Akhtar, advocate was appointed Commissioner, on 20.08.2007 he was superseded by Mr. Shafi Muhammad Roonjho, advocate. Then on 10.11.2008 Mr. Shafi Muhammad Roonjho, was superseded by yet another Commissioner. On 07.3.2011 this Court has ordered that in case of any adjournment sought by the parties cost of Rs.3000/- shall be imposed. The Commissioner report suggests that even after this order the Plaintiff did not appear before the Commissioner for cross-examination. The Commissioner's report dated 20.8.2011 indicates that counsel for the Plaintiff requests for adjournment as Plaintiff was out of city without payment of cost of Rs.3,000/- despite order dated 7.3.2011. Thereafter Commission was returned and the case came in Court for evidence of the Plaintiff. The Plaintiff's witness never turned up in Court nor his advocate was appearing. However, on 06.9.2013 Mr. Bahzad

Haider, Advocate appeared in Court for Plaintiff and in his presence it was ordered that failure of production of evidence within two months will render his client in trouble to the extent that this failure would be treated as “no evidence” of the Plaintiff and suit will be disposed of. This order was passed in his presence and therefore, he chose a novel way of getting this order frustrated. He did not bother to approach the Commissioner for ensuring the compliance of order and after one month and three days on 09.10.2013 he presented an application for recalling of the order dated 06.9.2013. He knew two months was given in the said order and despite being aggrieved of this order, he did not challenge it for more than one months’ time. However, the matter does not ends here, he filed an application without proper application of his mind and objection was raised by the office on his application. Learned counsel did not bother to comply with the office objection from 09.10.2013 to 21.2.2014 and his application remained under office objection for four months and 12 days. Today he has candidly conceded that if this order is there, the suit stand dismissed for want of evidence unless his application is allowed. The courage of willful disobedience of order only indicates that counsel has not cared for consequence of order on his client cause. However, the Court is conscious of its obligation and therefore, as an indulgence instead to penalizing his client on the willful and deliberate failure in obeying the order of the Court this application is allowed even without notice to the other side subject to payment of cost of Rs.25,000/- to be deposited in account of High Court Clinic Committee within 07 days. This cost is imposed on account of delay in filing this application for recalling / modification of the order dated 06.9.2013 after the time frame given in the order and taking more than four months’ time in

complying office objection on this application. Unless cost of Rs.25,000/- is paid within one week this application will be treated as dismissed and the case will be treated as disposed of in terms of order dated 06.9.2013.

To come up on 10.3.2014.

JUDGE

SM