

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

R.A. No.185 of 2005.

DATE ORDER WITH SIGNATURE OF JUDGE

For orders on statement.

For hearing of CMA-663/2005.

04.09.2014.

Mr. Ashfaque Nabi Qazi, Asstt. A.G. for applicants.

None present for the respondents.

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Learned A.A.G. has contended that once the case was remanded, the appeal should not be treated as allowed. He is not aggrieved by the remand order. His contention was that the suit was not maintainable as it was not filed in accordance with provisions of section 79, CPC.

Through this revision application, impugned order whereby Additional District Judge, Sanghar has remanded F.C. Suit No.76 of 1996 to the trial Court for decision on merit after impleading Government of Sindh and taking written statement on record according to law has been assailed. The contention raised by learned A.A.G. is that the Government of Sindh was not impleaded through Secretary of concerned Department in the plaint initially filed in Suit No. 76 of 1996 and, therefore suit was dismissed by judgment dated 10.4.1988. However, an appeal the learned Additional District Judge, Sanghar in Civil Appeal No.18 of 1998 has remanded the case to the trial Court with the following observations:-

“ Considering the above cited law, let the case be remanded to the learned trial Court with the direction that the Province of Sindh respondedent through the Secretary of concerned Department as held in the aforesaid decision. The opportunity be provided to the officials department for giving the written statement, matter be decided in accordance with law. The appeal of the appellant is allowed with no order as to costs.”

The contention of learned A.A.G. that the appeal should not have been declared allowed is misconceived. In fact once the case was remanded by the appellate Court to the trial Court such order impliedly indicates that the judgment and decree against which appeal has been filed cannot hold the field. It has to be deemed to have been set aside. In the operative part of the order, it was not said in so many words, therefore, the order should be treated as setting aside the decree in Suit No.76 of 1996, case is remanded with direction to the trial Court to proceed with the case in accordance with law after impleading the Secretary, Government of Sindh so that the proceedings should be in accordance with the provisions of section 79, CPC and Article 172 of the Constitution.

The Revision Application stands disposed of in the above terms.

JUDGE.

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