

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
II- Appeal No.128 of 2020

Date	Order with Signature of Judge
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M/s. Telenor Pakistan (Pvt) Ltd.....Appellant

Versus

The Administrator, DMC West (Orangi Division).....Respondents

Date of hearing :07.05.2025

Date of judgment :07.05.2025

Mr. Ghulam Hyder Shaikh, Advocate for the Appellant.

JUDGEMENT

MUHAMMAD JAFFER RAZA, J; - Instant 2nd Appeal has been preferred against judgment and decree dated 13.02.2020 and 20.02.2020 in Civil Appeal No.27/2015. The said Civil Appeal emanated from the judgment and decree dated 30.05.2015 passed by the learned IVth Senior Civil Judge, Karachi West, in Civil Suit No.167/2012. Learned counsel for the Appellant has stated that the judgments below suffer from infirmity, which require interference of this Court under Section 100 CPC. He has primarily relied upon the ground, which is taken in paragraph No.6 of memo of appeal. The same is reproduced below: -

“That after recording of settlement of issues and recording of evidence the case proceeded to trial and was argued at length before previous learned IV Senior Civil Judge (West) Mr. Syed Khaleel Anwer Hussain Jafri. The case was reserved for judgment on 20.02.2015 and the impugned decree and judgment dated 30.05.2015 was passed by his successor learned Tribal Judge Mr. Ashfaq Ahmed Mughal without providing any opportunity for hearing or considered Appellant arguments and case laws cited earlier and has passed the impugned judgment and decree dated 30.05.2015, whereby the Appellant is seriously prejudiced, hence, this appeal.”

2. In the said ground learned counsel has categorically stated that the matter was reserved by another learned Judge of the trial Court on 25.04.2015 and the case was adjourned to 26.04.2015 for announcement of judgment. However, judgment was announced by another learned Judge of the trial Court, who had not

heard the matter and in this respect the learned counsel states that he was condemned unheard, as judgment was pronounced by a Judicial Officer, who did not hear the arguments of the respective parties. According to learned counsel, this ground despite being specifically taken in the memo of appeal was not deliberated upon in the impugned judgment.

2. Instant appeal was filed on 22.07.2020 and the contention of the learned counsel was recorded in the order passed by this Court on 09.09.2020. Notices were issued to the Respondent through all modes except publication. Thereafter, Respondent could not be served and through order dated 09.11.2020 notices were ordered to be served through all modes including publication. Respondents have been repeatedly served and not have not affected appearance in the instant IInd Appeal, except on 01.10.2024 when vakalatnama was filed on behalf of the Respondent. Therefore, the instant appeal is being decided with the able assistance of the learned counsel for Appellant.

3. I have heard the learned counsel and perused the record with his able assistance. It is apparent from the face of the record that the judgment was announced and passed by the Presiding Officer of the learned trial Court who did not hear the arguments of the respective parties. Therefore, the contention of the learned counsel for Appellant is correct to the extent that the final arguments advanced by him were not heard by the learned Judge who pronounced the judgement and decree. In view of what has been observed above, I see no cavil in remanding the matter to the trial court for decision afresh, within thirty (30) days from today, after hearing the respective parties on the evidence already recorded in the matter.

Instant IInd Appeal is allowed, consequently, impugned judgments and decrees are hereby set-aside.

Office to send the R & P to the learned trial Court accordingly.

Judge