

**THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Present:
Justice Jawad Akbar Sarwana

2nd Appeal No. 30 of 2017

1. For hearing of CMA 906/2017.
2. For hearing of main case.

Appellants	:	(1) Syed Fuzail s/o Syed Kamal Ahmed, (2) Mst. Ambreen Liaquat d/o Syed Kamal Ahmed, (3) Mst. Qaisareen Masood d/o Syed Kamal Ahmed and (4) Mst. Samreen Tahir s/o Syed Kamal Ahmed through M/s Muhammad Arshad S. Pathan and Safdar Hussain Leghari, Advocates.
Respondent No.1	:	Mst. Farhat Parveen wd/o Obaid-ur-Rehman. Nemo.
Respondent No.2	:	Province of Sindh through Secretary Local Government Sindh Secretariat Karachi through Mr. Wali Muhammad Jamari, Assistant A.G, Sindh.
Respondents No.3&4	:	Administrator Taluka Municipal Administration Office at Unit No.6, Latifabad Hyderabad and Taluka Officer (Regulation) former D.H.O Latifabad Hyderabad office at Fire Brigade Unit No.8 Latifabad Hyderabad. Nemo.
Date of Hearing	:	02.12.2025
Date of Judgment	:	02.12.2025.

J U D G M E N T

JAWAD AKBAR SARWANA, J: This matter has been listed before me on 27.10.2025, 06.11.2025, 25.11.2025, 01.12.2025 and once again today on 02.12.2025. While the learned counsel for the appellants has been insisting to proceed with the matter this bench had exercised restraint as the counsel for respondent No.1 was/has been on general adjournment upto 26.12.2025.

Therefore, this Court was reluctant to proceed with the matter. However, appellants' counsel has submitted that inspite of general adjournment obtained by the said counsel (the counsel for respondent No.1) who is the plaintiff in F.C. Suit No.741/2012 in fact has been proceeding on day to day bases in the aforesaid F.C. Suit which has its own history (to be discussed by me later). Be that as it may counsel submitted that the counsel appearing for respondent No.1 has been on general adjournment throughout the year. To this end on perusal of the diary sheet it is evident that this matter has been listed on several dates of hearing throughout the year but for the non-attendance of the respondent No.1 this 2nd appeal could not be heard. Accordingly, this bench called for adjournment list of the counsel for respondent No.1 from office which reads as under:-

HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD ADJOURNMENT LIST Syed Ahsan Ali Shah (ADVO-1634-SBC-HYD) FROM: 01/01/2025 TO: 12/31/2025				
#	Advocate name	Adjournment Type	From date	To Date
1	Syed Ahsan Ali Shah	Except in date by Court case and/ or Cases wherein interim orders are operating	04-AUG-25	26-DEC-25
2	Syed Ahsan Ali Shah	Except in date by Court case and/ or Cases wherein interim orders are operating	29-APR-25	30-MAY-25
3	Syed Ahsan Ali Shah	Except in date by Court case and/ or Cases wherein interim orders are operating	20-JAN-25	22-APR-25

2. It appears that while on one hand the respondent No.1 has engaged the counsel to proceed with the trial case, the 2nd appeal has been lingering on for entire year as counsel for the respondent has taken adjournments for almost six (06) months. In the meanwhile, it transpires that the judgment and decree which has been assailed in this 2nd appeal has entirely been set aside vide orders dated 15.12.2020 passed by this Court in C.P.No.D-1717/2019. The challenge and as per the discussion found in the said C.P.No.D-1717/2019 involves similar fact pattern as the one that have been agitated by the appellants in this 2nd appeal. The order dated 15.12.2020 has been maintained by the Supreme Court vide order dated 24.05.2023 in C.P.L.A No.814/2021. As per the diary sheet of F.C. Suit No.741/2021, it appears that

the matter is currently pending at the stage of filing of Written Statement by the defendant No.1 in the said Suit.

3. Given the above, although the counsel for respondent No.1 is on general adjournment, I exercised my discretion and proceeded with the hearing to decide this 2nd appeal which has been pending in this Court for the last 08 years. As per the terms of the general adjournment granted by the Additional Registrar of this Court to respondent No.1, Counsel, said Counsel was granted general adjournment for 06 months except for date by Court cases and in cases where stay is operating. Hence this IInd Appeal falls in the exceptional clause of the general adjournment and I have heard the same today.

4. The background of this lis is well summarized in the order of Divisional Bench of this Court passed in C.P.No.D-1717/2019 which is reproduced hereunder:-

“This petition is arising out of findings of two Courts below. A Suit bearing No. 741 of 2012 was filed for possession, permanent and mandatory injunction against Mst. Shameem Begum through her legal heirs, one of the legal heir is the petitioner Mst. Samreen Tahir. The notices of summons were allegedly issued but the record shows that factually the service of notices/summons was not effected upon petitioner. Consequently an application under Order 9 Rule 7 was filed by another legal heir namely Syed Fuzail Ahmed, who is the brother of the petitioner. The application was dismissed. The brother of the petitioner Syed Fuzail Ahmed also filed an appeal bearing No.121 of 2016 against the judgment and decree, which was dismissed and consequently the Second Appeal No.30 of 2017 is pending adjudication. This apparently is separate litigation in between Syed Fuzail Ahmed and Ubaid-ur-Rehman, the plaintiff of the Suit, however, the present controversy arises, when an application under Section 12(2) was filed before the Trial Court in respect of the judgment and decree obtained by the respondent No.1 by petitioner.”

5. It is the case of the appellant that the trial proceedings were ripe for hearing and that although the exparte orders were passed on 30.10.2013 however no opportunity was provided to the appellant even if the exparte

proceedings were in operation to cross examine the plaintiff's witnesses and the entire matter was proceeded in a hurried manner. He submits that no issues were framed even though the defendants No.3 and 4 had filed the Written Statement and the suit was decreed without recording of evidence of any of the defendants. Counsel contends that in view of the developments in this dispute currently the judgment and decree impugned in this 2nd appeal has been set aside and therefore, no harm will be caused to the parties if in the interest of justice the appellants are also allowed to proceed with the defence of the suit by way of filing the Written Statement and defending the lis.

6. Heard counsel. It is apparent from the record available in the 2nd appeal that there are several lacunas in framing of the issues and the matter has proceeded contrary to the procedure prescribed under the Civil Procedure Code. The defendants No.3 and 4 had admittedly filed the W.S and yet no issues were framed. Further the matter was put off for examination in chief and side of the plaintiff was closed on the same date without giving notice to the opposing party/counsel to cross examine the witnesses or even sending notice to any of the defendants. As no opportunity was provided the opposing counsel could not contest the case and a judgment was announced without providing an opportunity of hearing to the appellants.

7. Without prejudice to the foregoing although this bench must decide this lis within the contours of the frame work agitated by the appellants yet the bench cannot keep its eyes shut to the surrounding facts which have arisen during the pendency of this 2nd appeal. This is especially relevant as the judgment and decree assailed in this 2nd appeal have already been set aside. Currently the matters are at the same stage as they were when the trial Court passed the Judgment. If this Court was to allow this 2nd appeal the parties would be at the same stage as is currently the case for all the remaining

defendants in Suit No.741/2012 i.e. at the stage of filing of the Written Statement. The matters should be decided after giving opportunity of trial/merit rather than technicalities. Accordingly this 2nd appeal is allowed to the extent of appellants' case be remanded to the trial Court for adjudication and the trial Court after giving an opportunity to the appellants to file Written Statement, may proceed with framing of issues and decide the case on merits in accordance with law. It is clarified that at this stage the Civil Execution No.68/2016 has already been dismissed however, the parties in order to keep parity status-quo between the parties shall be maintained until the decision of the trial Court in F.C. Suit No.741/2012.

8. The 2nd appeal stands disposed of in the above terms alongwith listed application.

JUDGE

Tufail