

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
H.C.A. No. 118 of 2007

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar.
Mr. Justice Abdul Maalik Gaddi.

Maj. (Retd.) Abdul Rauf Khan.....Appellant

V E R S U S

National Logistic Cell & another.....Respondents

Date of hearing 03.02.2017

Mr. Umer Lakhani advocate for the appellant.

M/s. Muhammad Ashraf & Afsheen Awan advocates for the Respondents.

Muhammad Ali Mazhar, J: The appellant filed this appeal against the impugned judgment passed by the learned Single Judge of this court on 08.03.2007 in Suit No.904 of 2002.

2. The claim of the appellant/plaintiff in the suit is that he is entitled for professional fee being an advocate who contested the cases of the Respondent No.1 in various courts. While Respondent No.1 resisted the claim of the appellant on the sole ground that he was full time salaried employee and was not entitled of anything over and above the service benefits which have been paid to him. The learned trial court framed three issues which are reproduced as under:-

“1. Whether the plaintiff’s appointment as legal advisor to the Defendants was only to provide pretrial post trial advice on internal Military courts

matter/court of inquiries only and not to attend any civil court of law?

2. Whether the case conducted by the plaintiff as an Advocate for the Defendant, Civil courts, having original / appellate jurisdiction entitles the plaintiff to claim professional fee?

3. What should the judgment/decreed be?"

3. After recording evidence of the parties, the suit was dismissed with the following findings:-

"From the above terms and conditions of service, it seems that plaintiff was full time employee of Defendant No.1 and at the most, representing as official of Defendant No.1 and not as an advocate, as in some case, he has also appeared before Hon'ble Supreme Court of Pakistan whereas he has been not enrolled in such capacity but since he was an official of Defendant No.1, therefore, he represented it. It is also worth noting that he has been paid gratuity from 01.01.1992 till 23.12.2001 i.e. for full qualifying service years. He was residing in a accommodation, provided by Defendant No.1 and enjoying all benefits akin to Defendant No.1's employees, therefore, it is not difficult to adjudge the plaintiff as an employee of Defendant No.1 as legal advisor on full time basis, for which he was paid salary and service benefits hence he was not entitled to claim any fee as an advocate.

In these circumstances, the suit is not maintainable and is dismissed accordingly."

4. During pendency of this appeal, the appellant expired, therefore, the names of his legal heirs were brought on record and the amended title was filed on 25.08.2010. For last many dates nobody was appearing in the case, however, on 27.01.2017, Mr. Umer Lakhani advocate appeared and informed the court that in this case he was nominated by the Sindh High Court Bar Association to contest the matter on the request of legal heirs of the appellant to the Bar but he was

never contacted by the legal heirs nor the case file was ever supplied to him, therefore, he requested us on the last date to issue notice to the legal heirs. Accordingly, we issued notice to the legal heirs and according to Bailiff report, notice was received by one Ms. Nida on 31.01.2017 on the same address which the appellant mentioned in the memo of appeal. Despite issuing notice, nobody appeared nor any intimation is received. Even otherwise, the judgment clearly demonstrates that the matter was decided after recording evidence and it was held that the appellant was permanent employee, therefore, he was not entitled to any professional fee. It is further stated in the judgment that he has been paid all the salary and service benefits, therefore, he is not even entitled to claim any fee as an advocate. Learned counsel for the Respondent also repeated the same contention that the appellant was full time employee so he is not entitled to claim any professional fee on account of his advocacy. Mr. Umer Lakhani advocate submits that he pleads no instruction.

5. In view of the above discussion, this appeal is dismissed.

JUDGE

JUDGE