

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 923 / 1996

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1) For orders on O/A Report No. 1/2017 dated 21.2.2017.
- 2) For hearing of CMA No. 1813/2009.

20.03.2017.

Mr. Waqar Ali Advocate for Plaintiff.
Mr. Kamal Azfar Advocate for Defendants No. 2 to 8.

1 & 2) Through this application it has been requested on behalf of Defendants No. 2 to 8 to direct the Official Assignee to proceed further for recording of evidence on behalf of Defendant No. 1.

Learned Counsel for aforesaid Defendants has referred to Section 333 of the Companies Ordinance, 1984 and submits that this is a Suit wherein, a counter claim has been filed by Defendant No. 1 along with the written statement and since the Defendant No. 1 was under liquidation, Official Assignee was appointed as Official Liquidator. However, he is not proceeding further in the matter to lead evidence on behalf of the Defendant No. 1. He submits that directions be issued to the learned Official Assignee for doing the needful.

On the other hand, learned Counsel for the Plaintiff has opposed the listed application on the ground that Defendant No. 1 was though under liquidation; however, now such proceedings have been completed and the Company stands dissolved in terms of Section 350 of the Ordinance, 1984. He has placed on record order dated 22.04.2004 passed in J.M. No. 17/2003 to that effect and has also placed reliance upon judgment in the case of *Syed Mehmood Ali V. Network Television*

Marketing (Pvt.) Ltd. and another (2005 CLD 840) and submits that now Defendant No. 1 is a dead Company, therefore, no evidence can be led.

I have heard both the learned Counsel and perused the record. It appears that instant Suit was filed in the year 1996 by the Plaintiff for Specific Performance of a Contract and Recovery, whereas, the written statement was filed on behalf of Defendant No. 1 which also includes a counter claim valued at Rs. 20,216,190 with mark up on 5.8.1997. Thereafter, the Official Assignee was appointed as Official Liquidator for Defendant No. 1 and apparently on 22.04.2004 an order has been passed under Section 350 of the Companies Ordinance, 1984 for its dissolution in J.M. No. 17/2003. Notice was also ordered on this application to the learned Official Assignee who has placed his Reference No. 1/2017 through which he relies upon his earlier reply dated 15.8.2013 in response to notice dated 20.04.2013 already furnished to this Court. Perusal of Official Assignee report / reply dated 15.8.2013 reflects that he has only confirmed the position to the extent of his appointment as an Official Liquidator and the dissolution order passed under Section 350 of the Companies Ordinance, 1984, but has not specifically stated as to why he is unable to proceed further on behalf of defendant No.1. It would be advantageous to refer to Section 350 of the Ordinance, 1984 which reads as under:-

“350. Dissolution of company. When the affairs of a company have been completely wound up, or when the Court is of the opinion that the official liquidator cannot proceed with the winding up of the company for want of funds and assets or any other reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the company be made, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly:

Provided that such dissolution of the company shall not extinguish and right of, or debt due to, the company against or from any person.

(2) A copy of the order shall, within fifteen days of the making thereof, be forwarded by the official liquidator to the registrar, who shall make in his books a minute of the dissolution of the company.

(3) If the official liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred rupees for every day during which he is in default.”

Perusal of the aforesaid provision reflects that when the affairs of a Company have been completely wound up, an order for its dissolution can be made and the Company shall stand dissolved accordingly. However, the proviso provides that such dissolution of the company shall not extinguish any right of, or debt due to, the company against or from any person. The proviso in fact takes care of the present situation. Admittedly, the Suit was filed much prior to the appointment of the Official Liquidator and the counter claim was also filed prior to that. Therefore, in terms of the proviso as above claim against the Company or any right thereof does not extinguish even after passing of an order of dissolution under Section 350 *ibid*. In the circumstances, the contention of the Learned Counsel for the Plaintiff is not justified whereas, reliance on the judgment in the case of Syed Mehmood Ali Supra is also of no help as the facts of that case were materially different inasmuch as the Suit was for defamation and damages and after dissolution of the company it was held by the Court that the right to sue in respect of damages had survived.

In view of such position, I am of the view that Official Assignee is required to lead evidence in this matter on behalf of Defendant No.1, notwithstanding passing of the dissolution order as the proviso to Section 350 *ibid* caters to the situation in hand and claim of Defendant No.1 remains alive.

However, since incidentally in this matter the Official Assignee is also acting as Official Liquidator for the Plaintiff and if there is any conflict of interest as per his own independent assessment, then the Official Assignee may engage a Counsel to complete the exercise on behalf of Defendant No.1, for which necessary fee is to be paid by defendants No.2 to 8 who have filed listed application on behalf of defendant No.1. In view of aforesaid position the application stands disposed of accordingly.

J U D G E

ARSHAD/