

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

1. Ist. Appeal No.14 of 2009.
2. Ist. Appeal No.15 of 2009.
3. Ist. Appeal No.16 of 2009.
4. Ist. Appeal No.17 of 2009.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For katcha peshi.

13.11.2017.

Mr. Bilawal Ali Ghunio, Advocate for the appellants.

Mr. Gulab Khan Qaimkhani, Advocate for respondent in Ist. Appeal No.14 of 2009.

Mr. Muhammad Hashim Memon, Advocate for respondent in Ist. Appeal No.15 of 2009.

Mr. Mansoor Ahmed Khan, Advocate for respondent in Ist. Appeal No.16 of 2009.

No one is present for the respondent in Ist. Appeal No.17 of 2009.

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Learned counsel for the appellants states that the learned trial Court having come to the conclusion that the proceedings under Order XXXVII CPC based upon the impugned promissory notes were not maintainable passed the order of dismissal of plaint and at best the plaint could have been returned under Order VII Rule 10 CPC, as the learned trial was not having jurisdiction. Learned counsel for respondent in Ist. Appeal No.14/2009 has first contended that the alleged document / promissory note does not qualify the definition as to the negotiable instrument and as to the maintainability of the suit that was also challenged by the respondent on account of authorization. It has, however, been shown to this Court as to the matter of authorization could be decided without evidence where such authorization was not pleaded in the plaint and as to the return of the plaint it is not possible for a Court not having jurisdiction to pass a dismissal order and at best it is liable to return the plaint. In the circumstances, the impugned order is set aside and the matter is remanded to be heard and decided by the Court of competent jurisdiction in accordance with law. The appeal is disposed of with no orders as to costs.

2. Learned counsel for the respondent in Ist. Appeal No.16/2009 at the instructions admits for non-maintainability of the impugned order. The said exemplary attitude is highly appreciable to save the time of the Court as well as the other counsels present. This appeal is disposed of with no orders as to costs and the matter is also remanded to be heard and decided by the Court of competent jurisdiction in accordance with law.

3. No one is present for the respondent in Ist. Appeal No.17/2009, however, based upon the same matter similar order is available there as in the said appeals.

4. Learned counsel for the respondent in Ist. Appeal No.15/2009, states that the suit as was present before the learned trial Court as well as this appeal were not maintainable as the same were filed against the dead person. In this regard learned counsel further states that the impugned was not available before the trial Court and in these proceedings also without changing the requires structure this appeal has been filed through the son who is not available as the original proceedings were not available in the first instance. In this regard learned counsel for the respondent has relied upon **PLD 2009 Supreme Court 183** the case of **Bashir Ahmed Khan v. Qasim Ali**. He further contends that the learned counsel for the appellants must show from the record that the suit against a dead person should be maintained although learned counsel for the appellants pleaded that it was not in the knowledge of the appellants as to the state of affairs as the contract between the said parties was lost. Irrespectively, as to the maintainability of a suit against the dead person is not dependent upon the knowledge and it cannot be said that proceedings in the matter were available. In the circumstances, without disturbing the rights of the parties, the impugned order is set aside. Although, the impugned order is set aside, however, on account of maintainability this Court being appellate Court, in the circumstances, the appeal as it is stands dismissed with no orders as to costs.

JUDGE

