

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
HCA No.64 of 2018
HCA No.65 of 2018
HCA No.66 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Agha Faisal

Dates of hearing 22.05.2018 and 23.05.2018.

Date of Order 23.05.2018.

M/s. Amjad H. Bukhari and S.Amir Ali, Advocates for Appellants.

Mr. Abdul Razzaq, Advocate for Respondent.

Muhammad Ali Mazhar, J: In fact, the appellants through these appeals have challenged the impugned orders dated 02.03.2018 passed by the learned Single Judge of this Court. The appellant in HCA No.64 of 2018 has impugned the order passed in Suit No.1018 of 2003. The appellant in HCA No.65 of 2018 has challenged the order passed in Suit No.1618 of 1999 whereas the appellant in HCA No.66 of 2018 has challenged the order passed in Suit No.743 of 1999. The impugned orders in all the appeals were passed on the same date i.e. on 02.03.2018 and orders are stereotype except the suit numbers. Even the presence of the counsel is also same in all impugned orders. Learned counsel for the appellant argued that in fact on 2nd March, 2018 the suits were fixed for orders on the Commissioner's report dated 08.05.2017, which is available in the connected Suit No.659 of 1999.

2. We have also gone through the Commissioner's report in which the learned Commissioner has mentioned at least 30 suits with different stages, however, the suits involved in the present appeals i.e. (i) Suit No.743 of 1999 (serial No.12 in the Commissioner report), (ii) Suit No.1618 of 1999 (serial No.22 in the Commissioner report) and (iii) Suit No.1018 of 2003 (serial No.30 in the Commissioner report) were shown to be fixed for filing affidavit in evidence, the learned Commissioner closed the side for the reasons that no affidavit-in-evidence has been filed. When the Commissioner report was fixed for orders in the Court, the learned Single Judge observed that on the last date of hearing counsel for the plaintiff sought time for filing the objections to the Commissioner report but the

same has not been filed, which reflected that the plaintiff has lost interest in pursuing the instant suit, therefore, the suit was dismissed for want of evidence. We have also seen the order dated 22.05.2002 passed in Suit No.659 of 1999 on which date the issues were settled and by consent the Commissioner was appointed to record the evidence. The same order was passed in Suit Nos.743 of 1999 and 1618 of 1999 whereas in Suit No.1018 of 2003, the issues were settled on 27.02.2006 and the same learned Commissioner was appointed. We have also noted that while appointing Commissioner the learned Single Judge of this Court did not confer any power to the Commissioner to close the side despite that the learned Commissioner closed the side of the plaintiff. We have also noted that counsel for the plaintiff raised this plea before the learned Single Judge that the Commissioner had no power to close the side but this point was not dealt with in the order. Since no powers have been given to the learned Commissioner to close the side, therefore, we are of the firm view that the side of plaintiff could not be closed by the Commissioner but at the best he could have referred to the matter to the court for passing appropriate orders. On the date when the suits were dismissed for want of evidence, the side of the plaintiff was already closed by the Commissioner so the case was fixed only for passing the order on the Commissioner report. Counsel for the respondent argued that sufficient time was availed by the plaintiffs but they failed to file their affidavit-in-evidence, however, he agrees that powers were not given to the Commissioner to close the side.

3. We are constrained to observe here that despite availing various opportunities, the plaintiff failed to file their affidavit-in-evidence, which cannot be led unattended but at the same time the function of the Court is to do substantial justice between the parties and must avoid the technicalities. Learned counsel for the appellant and respondent both confirmed that in the connected suits after returning back the brief by the earlier Commissioner, the court on 22.03.2018 has appointed Mr. Agha Zafar Ahmed, Advocate as Commissioner to record the evidence and the said order was passed in Suit No.744 of 1999 and other connected suits. Learned counsel for appellant undertakes that within 02 (two) weeks he will file affidavit-in-evidence before the Commissioner Mr. Agha Zafar Ahmed, Advocate with advance copy to the counsel for the respondent and on the next date the witness of the appellant shall be in attendance before the Commissioner without any default. The order of appointment of Commissioner passed in Suit No.744 of 1999 shall apply *mutatis mutandis*

in which this time the court has already given powers to the Commissioner to close the side so that the appellants should be careful.

4. As a result of above discussion, the order dated 02.03.2018 is set-aside subject to the payment of cost of Rs.20,000/- (Rupees Twenty Thousand Only) in each appeal that will be deposited/paid by the appellant to the High Court Bar Dispensary within 03 (three) days from the date of this order and also submit a receipt along with statement in the office as well as before the Commissioner at the time of filing affidavit-in-evidence. The High Court Appeals are disposed of along with all pending applications accordingly. The office is directed to place copy of this order in all above listed High Court Appeals.

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ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
HCA No.261 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Priority case.

1. For orders on CMA No.1446 of 2018.
2. For orders on office objections.
3. For hearing of Main Case.
4. For hearing of CMA No.1712 of 2017.

23.05.2018

Mr. Zahid Hussain, Advocate for Appellant No.1.
Appellant No.2 is present in person.
Ms. Sofia Saeed, Advocate for Respondent No.2.

Counsel for the appellant No.1 is present whereas appellant No.2 is present in person. Urgent application filed by appellant No.1 is granted. Let this matter be fixed on 07.06.2018.

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ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P No.D-

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- Priority.**
- 1. For hearing of CMA No.
 - 2. For hearing of Main Case.

23.05.2018

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- Priority.**
- 1. For hearing of CMA No.
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23.05.2018

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23.05.2018

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23.05.2018

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