

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.1153 of 2006

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of C.M.A No.13596 of 2019 (Review).

23.11.2020

Mr. Abdul Ghaffar, advocate for the plaintiff.
Mr. Fahah Pirzada, advocate for defendant No.3.
Mr. Muhammad Ahmer, Assistant Attorney General.

This Court vide order dated 01.10.2019 directed the office to place the matter before the learned Division Bench of this Court for an appropriate order in the following terms:

“8. In view of above discussion, by consent of the parties present in Court, prima-facie, this matter needs to be heard and decided by a learned Division Bench of this Court in its Constitutional jurisdiction in the light of paragraph No.158 of the judgment rendered by the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch supra. Therefore, the office is directed to place this case before a Division Bench of this Court for an appropriate order including the maintainability and other ancillary issues. The plaintiff is directed to file another set of pleadings accordingly.”

2. On 17.10.2019, defendant No.3 filed an application under Order 47 read with Section 114 of Civil Procedure Code (CMA No.13596 / 2019) for review of the order dated 01.10.2019 passed by this Court on the analogy that his consent as recorded hereinabove for referring the matter to the learned Division Bench of this Court for appropriate order may be removed.

3. We queried from the learned counsel for the defendant No.3 as to how the instant review application is maintainable when the matter was referred to the learned Division Bench of this Court for decision on merit, which was / is a correct legal position of the case. Learned counsel for defendant No.3 has submitted that his grievance is only to the extent of removal of the word “*consent*” from the aforesaid order, however, he agreed to the legal proposition set forth in the order under review.

4. I have heard the learned counsel for defendant No.3 on the listed application and have perused the material available on record and the grounds taken by him.

5. I have noticed that the review of the order can only be made by the party, if there is a mistake or error apparent on the face of the record, as provided under Order XLVII (Section 114 CPC).

6. Upon perusal of the order dated 01.10.2019 passed by this Court, which explicitly shows that the matter was simply referred to the learned Division Bench of this Court for hearing and decision on merits in the light of

Judgment passed by the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch versus Province of Sindh and others (2015 SCMR 456).

7. For the aforesaid reasons, I am not persuaded by the contention of the learned counsel for defendant No.3 that any case of Review is made out. This review application, therefore, merits dismissal as, in my view, the order dated 01.10.2019 was based on correct factual as well as the legal position of the case and I do not find any inherent flaw floating on the surface of the record requiring my interference, therefore, the question of calling in question the order by invoking the review jurisdiction is misconceived.

8. In the light of the above facts and circumstances of the case, no case for review is made out, the listed application bearing (CMA No.13596/2019) is dismissed with no order as to cost.

JUDGE

Shahzad