

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI**1st Appeal No. 96 of 2018**

Date	Order with signature of Judge
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PRESENT:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Rashida Asad.

Disposed of Case

1. For orders on Nazir's Report dated 14.09.2021.
2. For hearing of CMA No. 599/2020.

29.11.2021:

Mr. Muhammad Ali Waris Lari, advocate for the appellant.

Mr. Jawwad Dero, Additional Advocate General.

ORDER

1. Through listed application [CMA No. 599/2020], the appellant through Attorney, has prayed that the Court Fee of Rs. 15000/- deposited by the appellant, may be refunded to the appellant, as the appellant is ready to withdraw instant appeal and extend no objection if the decretal amount already deposited before the Nazir of this Court may be paid to the respondent No.1 on humanitarian ground, who according to learned counsel for the appellant, has suffered paralytic attack.

2. Learned counsel for the appellant has argued that since no real trial has proceeded in the instant matter, nor any evidence has been recorded, whereas, precious time of the Court has not been utilized, and the appellant on humanitarian ground, has settled the matter outside the Court, whereas, the decretal amount has been paid to the respondent No. 1 and appeal has been dismissed as withdrawn vide order dated 07.10.2020, therefore, listed application may be granted and the amount of Court Fee in the sum of Rs. 15000/- may be directed to be returned/refunded to the appellant on compassionate ground. In support of his contention, learned

counsel for the appellant has placed reliance on the following cases:

- i) *Haji Hasham & Co. v. the Indus Assurance Co. Ltd. [1980 CLC1775(2)];*
- ii) *Messrs Khurshid Oil Mills v. Bank of Punjab [2010 MLD 1250];*
- iii) *Messrs Unity Paper Products v. Messrs Best Products (Pvt.) Ltd. [2005 CLC 688]; &*
- iv) *Fareed Alam v. Shiraz Afzal Malik [2012 MLD 1334].*

3. Notice of the listed application was issued to respondents as well as the office of the learned Advocate General Sindh, who have not filed any objection, whereas, during the course of hearing, the learned Additional Advocate General Sindh, keeping in view hereinabove facts and the case law as relied by the learned counsel for the appellant, did not oppose the grant of listed application.

4. We have heard the learned counsel for the appellant and the learned Additional Advocate General Sindh, perused the record with their assistance and have also examined the case law relied upon by the learned counsel for the appellant in support of his contention. Prima facie, the contention of the learned counsel for the appellant to the extent that there has been no real trial or proceedings taken place in the instant matter, which has been resolved between the parties without any intervention or order passed by the Court, as the appellant has made payment of the decretal amount to the respondent No.1 and has also withdrawn instant appeal on humanitarian ground, as the respondent No.1 has reportedly suffered paralytic attack. Moreover, no objection whatsoever has been filed by the respondent or the learned Additional Advocate General Sindh on the listed application,

whereas, decree has been satisfied on payment of the decretal amount to the respondent.

5. Accordingly, there seems no impediment, if listed application is allowed. Office is directed to issue certificate of refund of Court Fee in favour of the appellant within seven [07] days of this order.

Listed application [CMA No. 599/2020] stands disposed of.

JUDGE

JUDGE

A.S.