

Order Sheet  
**IN THE HIGH COURT OF SINDH,**  
**CIRCUIT COURT, HYDERABAD**

IInd Appeal No. 74 of 2019

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DATE	ORDER WITH SIGNATURE OF JUDGE
26.03.2021	

For orders on CMA 185/20  
For hearing of main case

Appellant present in person  
Mr. Faisal Junejo, advocate for respondents 3 & 4.  
Mr. Wali Muhammad Jamari, Asstt: A.G.

**ZULFIQAR AHMED KHAN, J-** This IInd Appeal impugns the Judgment dated 23.10.2019 passed by learned District Judge / Model Civil Appellate Court Tharparkar at Mithi in Civil Misc. Appeal No. 02 of 2019 whereby upon an application made by the respondent the Judgment and Decree of the trial court was set-aside upon holding that such was merely decided on technicalities. Appellant is present in person who himself is a lawyer has gone through the impugned Judgment of the trial court and points out that though number of opportunities were given to the Defendants which eventually were debarred from filing their written statement hence were proceeded exparte. Against which an application under Order IX Rule 7 CPC was also made by them, however, the said application was also dismissed by the trial court and against the said dismissal a Revision Application was filed and the said Revision also met the fate by order dated 17.11.2018. Appellant present in person submits that this order is based on misreading of the facts and ill application of law as the judgment and Decree was passed after giving all due opportunities to the rival party and remand of the matter back to the trial court will defeat the ends of justice.

2. Learned counsel appearing for respondents submitted that the cases should not have been decided mere on technicalities rather the defence could have been given proper chance to adduce its evidence and the case should have been decided after framing of issues.

3. Heard the parties and perused the material available on record.

4. The facts of the case given rise to the present litigation are that as per memo of plaint, the plaintiff enjoys good reputation in society being social activist, writer and compare of radio and stage. On 19-03-2013 defendant No.1 lodged F.I.R. No.75 of 2013 under Sections 500, 501, 502, 384, 385, 386, 34, PPC at Police Station Mithi against the plaintiff and others with allegations that plaintiff had demanded extortion money Rs.25,000/- from defendant No.1 and blackmailed him else he would publish false news against him. During the investigation, plaintiff was let off under Section 169 Cr. PC but subsequently on the order of SSP Mithi, the F.I.R. was reinvestigated and the case was challaned before the Magistrate having jurisdiction showing plaintiff as absconder. Thereafter, the plaintiff was arrested, remained in police custody for four days and then was admitted on bail. The case proceeded before Honourable Sessions Judge, Tharparkar at Mithi as Sessions Case No.90 of 2013 and ultimately on 12-07-2014, Honourable Sessions Judge acquitted the accused/plaintiff under section 265-H (I) Cr.PC. Thereafter as the plaintiff faced the agony of trial, suffered loss of reputation as well as financial; therefore, he filed suit claiming compensation of Rs.10,00,0000/- from defendants on account of malicious prosecution.

5. On the admission of suit, summons issued to Defendants which were returned duly served upon them. Their counsel filed vakalatnama but failed to file written statement within the prescribed period, therefore, vide order sheet dated 26-02-2016, defendants were debarred from filing written statement and was ordered to be proceed *ex parte* against them. They, in order to get the *ex parte* order set aside, filed an application under Order IX Rule 7 CPC but the application was dismissed vide order dated 07-04-2018. They challenged such dismissal order through Civil Revision Application No.08 of 2018 before District Judge, Tharparkar at Mithi but such revision application was also dismissed vide order dated 17-11-2018.

6. Thereafter, plaintiff filed affidavit in *ex parte* proof and produced the copy of F.I.R. No.75 of 2013 under Sections 500, 501, 502, 384, 385, 386, 34, PPC at Police Station Mithi which defendant No.1 had lodged against him and others; certified true copy of bail order dated 19-12-2019 of Honourable Sessions Court, Tharparkar at Mithi whereby he was admitted on bail in said F.I.R.; certified true copy of Challan in said F.I.R.; certified true copy of formal charge framed against him in Sessions Case No.90 of 2013 arising out of said F.I.R.; certified true copy of depositions of complainant/defendant

No.1 and prosecution witnesses/defendants No.2 to 4 in Sessions Case No.90 of 2013; certified true copy of judgment dated 12-07-2014 by Honourable Sessions Judge, Tharparkar at Mithi through which he was acquitted under Section 265-H (I) Cr. PC; and legal notice, which according to him, he before filing instant suit had sent through TCS asking an amount of Rs.10,000,000/- from defendants.

7. The plaintiff / appellant submits that defendant No.1 lodged above false F.I.R. against him with the allegations that plaintiff had demanded extortion money Rs.25,000/- from defendant No.1, that out of said F.I.R., the case proceeded before Honourable Sessions Judge, Tharparkar at Mithi as Sessions Case No.90 of 2013 and ultimately on 12-07-2014, Honourable Sessions Judge acquitted him under section 265-H (I) Cr. PC; that he faced the agony of trial, suffered loss of reputation and financial loss; therefore, he is entitled to claim compensation Rs.10,000,000/- from defendants on account of malicious prosecution; that acquittal of the plaintiff in said sessions case is evident that he was maliciously prosecuted by the defendants; that defendants have failed to file their written statement within prescribed period and have been proceeded *ex parte*; therefore, the version of plaintiff has gone unchallenged; and that instant suit may be decreed as prayed. Moreover, learned counsel filed synopsis of such arguments and furnished the case law Abdul Wahab Abbasi v. Gul Muhammad Hajano (PLD 2008 Karachi 558), Tayyab Iqbal v. Muhammad Irfan Iqbal (2010 YLR 2575), Mst. Kaniz Fatima v. Farooq Tariq (PLD 2002 Karachi 20) and Abdul Ghafoor v. Syed Jawed Hussain Jaffrey (PLD 2006 Karachi 691).

8. Although, defendants have been proceeded *ex parte* but following the dictum laid down in Khalilur Rehman Bhutta v. Razia Naz (1984 CLC 890) that “*a person who has been proceeded ex parte has also a right to participate in the suit proceedings*”, their counsel was allowed to advance his arguments. Learned counsel submitted that defendant No.1 had not lodged any false FIR against the plaintiff but due to his compromise with plaintiff, he and defendants No.2 to 4 being PWs did not depose against the plaintiff in Sessions Case No.90 of 2013 and ultimately on 12-07-2014, Honourable Sessions Judge acquitted the accused/plaintiff under section 265-H (I) Cr. PC. Learned counsel further submitted that Honourable Sessions Judge has not held in His judgment dated 12-07-2014 that plaintiff had been maliciously

prosecuted; therefore, plaintiff's case has no footing to claim any compensation and that instant suit may be dismissed in the interest of justice.

9. The case emanated from filing of malicious prosecution by the present appellant in which notices were issued. The trial court has detailed out the entire exercise at page 2 of the Judgment whereafter the matter taken on ex parte proof as the affidavit filed by the plaintiff. As a matter of fact it could be seen that after having even been declared ex parte, the trial court gave an opportunity to the Defendant's counsel and considered his arguments. It is an admitted fact that the Sessions Court acquitted the accused on merits and for the reasons narrated in the trial court Judgment the case of malicious prosecution was established. In the given circumstances, I do not see any veracity in the impugned Judgment which has rendered the entire litigation to a nullity hence appeal is allowed and the impugned Judgment dated 23.10.2019 passed by learned District Judge / Model Civil Appellate Court, Tharparkar at Mithi is set-aside.

JUDGE