

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.1004 of 2011

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of CMA No.524/15 (U/S 151 CPC.)

24.10.2016.

Mr. S. Zulfiqar Haider Shah, Advocate for the plaintiff.

Mr. Aziz-ur-Rehman Akhund, Advocate for the defendant.

It appears that instant Suit has been filed as a Summary Suit under Order XXXVII C.P.C and on 23.12.2014, the leave to defend application filed on behalf of the defendant was dismissed, however, due to oversight the Suit was not decreed though in terms of Order XXXVII Rule 2 C.P.C. it is provided that the defendant has to appear and defend the Suit by obtaining a leave from the Court and upon his default of his obtaining such leave, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree. It further appears that thereafter an Appeal was preferred against the Order dated 23.12.2014, whereby the leave was refused and a learned Division Bench of this Court vide Order 26.02.2016 has been pleased to dismiss the Appeal. In the circumstances the argument of the learned Counsel for defendant that evidence is required to be led by the plaintiff even if the leave to defend application is dismissed is not only misconceived but against the express provisions of law as stated hereinabove. On 20.1.2015 on the aforesaid listed application office was directed to fix this matter as required under law, but again it has been listed for hearing of application which has been moved on behalf of the plaintiff requesting this Court to pass appropriate decree.

Be that as it may, since the leave to defend application stands dismissed against which the appeal preferred by the defendant also stands dismissed, instant Suit is decreed in terms of Order 37 Rule (2) CPC, for the amount claimed in the Suit along with interest / mark-up at the rate of 6% per annum from the date of institution of Suit i.e.6.8.2011 till realization as provided under Section 79 & 80 of the Negotiable Instrument Act, 1881

Office is directed to prepare decree accordingly.

J U D G E

Ayaz P.S.