

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
EXECUTION No. 50 / 1998

---

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

---

- 1) For arguments on O/A Reference No. 01/2014.
- 2) For orders on O/A Reference No. 01/2017.
- 3) For hearing of CMA No. 381/2015.

**18.01.2018.**

Mr. Fayyaz Aslam Advocate for Decree Holder.  
Mr. Abid Feroze Advocate for Judgment Debtor.  
Dr. Choudhry Wasim Official Assignee.

---

1) In this matter one Applicant namely National Motors Corporation had filed a claim against Judgment Debtor in respect of his dealership commission as well as other expenses incurred in safely keeping 9 vehicles belonging to the Judgment Debtor. On 16.5.2014 insofar as the dealership commission is concerned, Official Assignee was directed to disburse the same, whereas, for the remaining amounts of claim as mentioned in Reference No. 01/2012 the Applicant was directed to lead evidence before the Official Assignee. Through this Reference Official Assignee has placed on record the evidence led by the parties.

Learned Counsel for the Applicant submits that admittedly the Applicant was a dealer of the Judgment Debtor and was selling "Daewoo Taxi" on their behalf. According to the learned Counsel 9 Cars were available with the Applicant on behalf of Judgment Debtor from August, 1993 when scheme was abolished and the Applicant maintained them till 31.07.2000 when they were finally handed over to FIA. Learned Counsel submits that in this period the Applicant incurred various expenses under the head of carriage charges, rent charges, payment to

Chowkidar, electricity charges, personal expenses for promotion of business etc. etc. and the total amount being claimed after payment of the commission as above is Rs. 27,54,300/-. Learned Counsel has referred to various Exhibits including Exhibit A/4, A/5, A/6 and onwards and submits that the premises wherein, the vehicles were stored was obtained on rent for which necessary receipts against rental charges have been produced in evidence and in support two independent witnesses have also been examined including Chowkidar of the premises. Learned Counsel submits that admittedly the Vehicles were kept safely and were handed over to FIA on Court orders accordingly. Learned Counsel submits that since expenditure was incurred as above the Applicant is entitled for the reimbursement.

On the other hand, learned Counsel for the Judgment Debtor submits that the entire claim is fake and bogus whereas, no supporting witnesses have come before the Court. He further submits that the only agreement which the Judgment Debtor had was in respect of dealership commission which already stands paid and therefore, no further amount is to be paid.

I have heard both the learned Counsel and perused the record. Insofar as the claim of the Applicant is concerned, the same has been set out in the affidavit in evidence at Para 6 in respect of various expenditure purportedly incurred under the head of dealership commission, carriage charges, payment made to the Chowkidar, electricity charges, personal expenses etc. etc. However, in support documents have been exhibited only in respect of the rent charges and the payment of salary to the Chowkidar. Insofar as rent charges are concerned, the Applicant has exhibited *Building Rent Out Willingness Certificate* which according to the Applicant was executed by Raja

Muhammad Ferozdin, (late father of the Applicant) as the premises was owned by the father and was rented out to the Applicant. While confronted, learned Counsel submits that the Applicant's father has expired and therefore could not be examined, whereas, the witness to this document namely Mr. Munir has not been examined and no satisfactory response has come forward for his non appearance. Similarly, certain hand written receipts in respect of the rent charges have also been exhibited but again no supporting witness has been examined. In the circumstances, insofar as claim of rent is concerned, the same cannot be entertained.

Further, the witness namely Mazhar Ayub claiming to be the friend of the Applicant has been examined and while being cross-examined he has stated as under:-

"I studied up to Matric in the year 1974. I understand English a bit. Being neighbor of claimant I know the father and claimant for last 30 years. My residence is at distance of 5 minutes' walk from the business place of claimant. I know claimant from the year 1976. The claimant is friend of my friend. I met him at the residence of my friend. The claimant is my friend. I knew the father of claimant from the year 1980. **I do not know about the rented place given on rent by Ferozdin, again says it was given by Mr. Ferozdin,** I have read the contents of my affidavit in evidence and signed it. It is incorrect to suggest that I have filed false affidavit in evidence."

The aforesaid cross-examination clearly reflects that insofar as the rent of the premises is concerned, firstly the witness says that I do not know that whether the place was rented by Ferozdin and at the same time he says, it was given by Mr. Ferozdin. The response of the above witness is neither confidence inspiring nor supportive in any manner, and the Court cannot consider it as a valid evidence.

The other supporting document is Iqarnama purportedly signed by Muhammad Ali Jan the Chowkidar who has also come before the Court and was cross examined which reads as under:-

"I am illiterate. I cannot read English. **I have not read my affidavit in evidence.** The copy of NIC (old) attached with Ex. A/7. Number of which does not tally with old number of NIC mentioned on new NIC. I produce original NIC No. 13101-1445314-5 as Exhibit C/2. Original seen and returned, photo copy kept on record.

Mr. Fayaz Aslam has objected to exhibit of CNIC as it is not a part of record. The objection will be heard and decided by Hon'ble Court at the time of final arguments. I do not understand English. **The contents of affidavit in evidence were not read over to me which are in English.** It bears my L.T.I."

Perusal of the aforesaid cross examination clearly reflects that insofar as this witness is concerned, he has not been able to support the claim of the Applicant in any manner.

In view of hereinabove facts and circumstances of this case, it has come on record that the applicant has not been able to justify and substantiate its claim; therefore, the same cannot be granted. The Official Assignee's reference is taken on record and the claim of the Applicant stands dismissed.

**J U D G E**

ARSHAD/