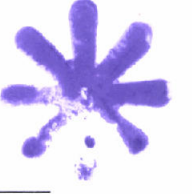


ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

HCA No.06 of 2019



Date	Order with signature of Judge
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1. For order on office objection /reply at "A".
2. For hearing of main case.
3. For hearing of CMA No.38/19 (Stay)

17.01.2020.

Mr. Umer Farooq Khan, Advocate for the appellant.
Syed Hassan Imam, Advocate for the respondent.

This High Court Appeal (**HCA**) has been filed impugning the order dated 04.12.2018 passed by the learned Single Judge in Suit No.802 of 2013.

Briefly stated, the facts of the case are that the respondent, who is the plaintiff in Suit No.802 of 2013 and husband of the present appellant, filed a benami suit for declaration and injunction against the present appellant (defendant). Thereafter, Commissioner was appointed to record the evidence of the parties, however when the present appellant (defendant) did not appear before the said Commissioner, he closed her side. Thereafter the present appellant moved an application under Section 151 CPC bearing CMA No.15616/18 for reopening her side for cross-examination, however when the same was dismissed vide the above referred impugned order thereafter the instant HCA has been filed.

Mr. Umer Farooq Khan Advocate has appeared on behalf of the appellant and stated that the appellant is suffering from cancer and is still under treatment. He invited our attention to various medical

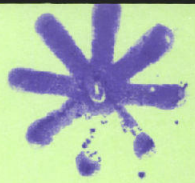


reports available at pages 67 to 81 of the file. He stated that the counsel appearing in the instant matter did not inform the appellant about fixation of the matter before the Commissioner and even the Commissioner also did not issue any notice to the appellant about fixation of the matter before him. He stated that an application for appropriate action against the said counsel was also preferred before the Sindh Bar Council. He stated that his only submission being that keeping in view the health condition of the appellant and the interest of justice this HCA may be allowed and the appellant may be may be allowed to cross-examine the respondent.

Syed Hassan Imam Advocate has appeared on behalf of the respondent and stated that the things which are now being agitated before this Court were never brought to the notice of the learned Single Judge and even the application under Section 151 CPC was filed after a considerable delay. He, therefore, has opposed the instant HCA.

We have heard both the learned counsel at some length and have also perused the record.

From the various documents available in the instant file it is evident that the present appellant is suffering from cancer and had remained under treatment. Before disposing of the matter we asked Syed Hassan Imam, learned counsel for the respondent, that keeping in view the health condition of the appellant and on humanitarian aspect does not in his view the appellant may be allowed to put her case before the Commissioner to allow her to cross-examine the



respondent. Though he firstly objected but thereafter conceded that the appellant deserves some leniency so far as her health condition is concerned. We, therefore, without indulging into other aspects of the matter, only in the interest of justice and on humanitarian grounds, remand this matter to the learned Single Judge with directions to grant an opportunity to the appellant to record her evidence and to cross-examine the respondent, who is the plaintiff in the suit, in accordance with law. With these observations the instant HCA stands allowed and the listed application stands disposed of.

JUDGE

JUDGE

*Order
of Appeal
07.10.11/2020
S.*