

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
H.C.A. No. 49 of 2023

Date	Order with Signature(s) of Judge(s)
	BEFORE: Justice Irfan Saadat Khan, Ms. Justice Sana Akram Minhas, JJ

Hearing(Priority) Case.

1. For order on office objection/reply at "A".
2. For hearing of main case.
3. For hearing of C.M.A. No. 801/23 (Stay Application).

19.04.2023

Mr. Ovais Ali Shah & Ms. Maryam Riaz, Advocates for appellants.
Mr. Abdul Wajid Wyne, Advocate for respondents No. 1 & 2.
Mr. Abdul Qadir Khan, Advocate for respondent No. 4.
Ms. Leela @ Kalpna Devi, Additional Advocate General.

Irfan Saadat Khan, J. This High Court Appeal (H.C.A.) has been filed against the order passed on 24.02.2023 by the learned Single Judge in Suit No. 988 of 2020.

From the facts of the case it appears that respondent No. 4 Pir Muhammad Yousuf Jan Sarhandi filed an application bearing C.M.A. No. 13340 of 2020, under Order I Rule 10 C.P.C. for becoming a party in the aforesaid suit. The said application came up for hearing on 24.02.2023 before the learned Single Judge when Mr. Ovais Ali Shah, counsel appearing for the appellants, was not available and a request for adjournment was made on his behalf that he is busy before another Bench; however, the learned Single Judge did not accede to the said request and after hearing all the respective parties, present before him, allowed the said application and directed the appellants to file amended title and plaint accordingly.

Learned counsel appearing for the appellants has stated that on the said date i.e. 24.02.2023 he was busy before some other Bench; therefore, he requested his associate to hold brief on his behalf and to make a request to the

Bench for adjournment; however, the learned Single Judge did not consider the said request and passed the impugned order by allowing the respondent No. 4 to become a party in the said suit. He has further stated that he was not heard in the said matter; hence, serious prejudice has been caused to the appellants as the principle “audi alteram partem” in his view has been violated. He has; therefore, stated that since he was not heard; hence, the impugned order suffers with the said illegality; therefore, the matter may be remanded to the learned Single Judge for granting opportunity of hearing to him and to make his submissions in accordance with law on the said application.

Learned counsel appearing for respondent No. 4 has opposed the present H.C.A. and stated that even if counsel for the appellants was not present before the learned Single Judge his associate, whose name is very much appearing in the Vakalatnama, was present and has even opposed the said application. He further stated that the contention of the counsel for the appellants that he was not heard is not correct as even if counsel for the appellants was not present and was not heard but his associate was present and was heard; hence, requirement of the law with regard to principle “audi alteram partem” has duly been fulfilled. He, has therefore, stated that this H.C.A. is not maintainable and the same merits dismissal.

Learned counsel appearing for respondents No. 1 & 2 has adopted the arguments of the counsel for respondent No. 4 and stated that this H.C.A. merits no consideration and the same may be dismissed as according to him also the appellants’ counsel was heard by the learned Single Judge.

Learned Additional Advocate General has stated that whatever order is being passed by this Court would be complied with in letter and spirit.

Matter has been heard and the record has been perused. We are of the view that since on the said date i.e. 24.02.2023 counsel for the appellants was not present before the learned Single Judge; hence, it is apparent that he was not heard in respect of the said application filed under Order I Rule 10 C.P.C. by the present respondent No. 4. Under Order I Rule 10 C.P.C. the Court has ample jurisdiction to array any party which the Court considers to be proper and necessary on its own accord without even hearing the respective parties and to array or delete any person/party, who are deemed proper and necessary in a matter for a just decision. It is noted that the objections on the said application were duly filed by the counsel for the appellants but the same were not considered by the learned Single Judge, while passing the impugned order. Moreover when the counsel for the appellants was busy before another Bench and a request in this regard duly was made before him in our view the learned Single Judge ought to have either adjourned the matter or kept the matter aside and thereafter decided the said application by keeping in view the interest of justice after hearing the respective parties.

Since in the instant matter counsel for the appellants was not heard; hence, we are of the view that it would be in the interest of justice and fitness of things if this matter is remanded to the learned Single Judge to grant opportunity of hearing to the counsel for the appellants in respect of the application under Order I Rule 10 C.P.C. filed by the present respondent No. 4. We, therefore, under these circumstances direct the parties, present before us, to appear before the learned Single Judge to reargue the matter afresh in respect of said application under Order I Rule 10 C.P.C. filed by the present respondent No. 4, which would be considered to be pending adjudication, in view of the facts narrated above.

It is expected that while proceeding with the said application neither the counsel for the appellants nor the counsel for the respondents or the intervenor would seek any adjournment and would proceed with the matter strictly in accordance with law.

With these directions the instant H.C.A., alongwith the listed application, stands disposed of.

JUDGE

JUDGE

Athar Zai