

ORDER SHEET

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Revision Application No. 35 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGE

23.10.2023.

FOR ORDERS ON OFFICE OBJECTION NO.15.
FOR ORDERS ON C.M.A. 360/2022.
FOR ORDERS ON C.M.A. 361/2022.
FOR HEARING OF MAIN CASE.

Mr. Riazuddin Qureshi Advocate for Applicant.
Mr. Abdul Shakoor Keerio Advocate for Respondent.

Impugned Order has remanded the case to learned Trial Court after framing of an additional issue that whether payments has been received by present Applicant in respect of the subject matter.

Learned counsel for the Applicant states that the deposition available on record amply covers the additional issue framed by the learned Appellate Court, and he has referred one of the witnesses, Mobeen whose deposition is available on record and he has stated that he has paid the price to Liaquat Ali / Respondent No.17, who is the real brother of present Applicant.

On the other hand learned counsel representing legal heirs of Respondent No.7 - Dhani Bux, states that he opposes the present revision and the impugned Order is correct.

The testimonies available on record apparently cover the controversy regarding which an additional issue is framed in the impugned Order. However, if the Appellate Court was of the view that this material issue requires further evidence, it could have directed the parties to lead the evidence, by invoking Rule 27 of Order 41 CPC, instead of remanding the case. It is also necessary to observe that Appellate Court being Court of ultimate facts has powers vested upon the Trial Court, in terms of Section 107 of CPC. When the entire record is before the Appellate Court, it is not proper to remand the matter to the learned

Trial Court in a routine manner, only for resolving trivial issues, which under the law, can be determined by the Appellate Court itself.

Consequently, this Revision is allowed. Impugned Order is set-aside. Case is remanded to the Appellate Court, with direction to decide the matter on merits and if it is of the opinion that additional evidence is required, it can issue necessary direction to the parties in view of the above observation. It is expected that decision will be within four weeks from the date of receipt of this Order.

JUDGE

A.