

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

IInd No.114 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For hearing of CMA 2819/2022
2. For hearing of CMA 2820/2022
3. For hearing of main case

13.11.2023

Mr. Aamir Ali Memon advocate for appellant.
Mr. Babar Ali Dayo advocate for Respondent No.2(1) to (iv).
Mr. Ayatullah Khowaja advocate for Respondent No.2(v).

F.C. Suit No.52 of 2010 was filed in the Court of Senior Civil Judge-II Kotri by the present appellant and the said suit was dismissed vide Judgment dated 06.07.2021. The appellant filed Civil Appeal No.39 of 2021 and the same was allowed vide Judgment dated 06.10.2022 and the matter was remanded to the learned trial Court to proceed in terms directed. Notwithstanding the fact that the appellant's appeal was allowed and the matter was remanded the appellant has filed this second appeal on the contention that the appellate Court ought to have decided the matter conclusively itself and not remanded it to the learned trial Court.

At the very outset, learned Counsel was confronted to demonstrate as to how the appellant was aggrieved by a simple remand order; that also issued in the appellant's appeal which was allowed. Secondly, learned Counsel asked to demonstrate any infirmity in the appellate order meriting interference under Section 100 of the Code of Civil Procedure. Learned Counsel failed to satisfy the court on either count.

It is observed that the appeal filed by the appellant was in fact allowed; admittedly there was no cross appeal in the circumstances. There was no bar upon the appellate court to remand the matter and *prima facie* it was considered expedient to do so. Nothing could be demonstrated to preclude the authority of the appellate court to remand the matter and even otherwise no infirmity in terms thereof could be demonstrated.

Be that as it may, a second appeal may only lie if a decision is demonstrated to be contrary to the law; a decision having been failed to determine some material issues; and / or a substantial error in the procedure is pointed out. It is categorically observed that none of the aforesaid ingredients have been identified by the learned counsel. In such regard it is also important to advert to section 101 of CPC, which provides that no appeal shall lie except on the grounds mentioned in the Section 100 of CPC. While this Court is cognizant of Order XLI Rule 31 CPC, yet at this stage no case has been set forthwith to entertain the present appeal in view of the reasoning stated above. As a consequence hereof, in *mutatis mutandis* application of Order XLI Rule 11 C.P.C, this appeal is hereby dismissed along with pending application.

Judge