

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Ist Appeal No.53 of 2022
(Abdul Wali Versus Shahid Ghani & another)

Dated	Order with signature of Judge
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial

Hearing case

1. For order on CMA No. 596/2023
2. For order on office objection/ reply at A
3. For hearing of main case

Dated 20.03.2024

Mr. Fazal Rahim Yousuf Advocate for the Appellant
Ms. Saima Khan Solangi Advocate for the Respondent No. 1

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Muhammad Shafi Siddiqui, J - Heard counsel. Perused record.

2. A Summary Suit No. 28 of 2022 was filed before the concerned District Judge and was heard by Additional District Judge-VI, Karachi-South. At the relevant time when the service was effected, the Appellant was behind bars, perhaps in relation to FIR No. 12 of 2021 filed under Section 489-F PPC of Police Station Aram Bagh, Karachi.

3. Respondent's counsel gave some statistics of service and date of filing leave application, which are not opposed. The service of summon of the suit upon the appellant was effected on 16.02.2022 and leave to defend application was filed on 25.02.2022, that is within or around ten days' time. The only objection taken by the learned counsel for the Respondent is that the application under Order XXXVII Rule 3 C.P.C., which is a leave to defend application was without affidavit of the Appellant.

4. The requirement of Order XXXVII is that an application ought to have been filed within the prescribed time and the application was filed. It

is the requirement of the Sindh Civil Court Rules/Sindh Chief Court Rules that no application be filed without supporting affidavit. A supporting affidavit to the application was appended at the relevant time and the application was not without affidavit as otherwise noted in the order. The certificate of the Senior Superintendent, Central Prison, Karachi, showing the Appellant in custody, was filed on 24.02.2022. A production order was then passed and the Appellant was produced and the appellant then sworn his affidavit on 01.03.2022 on which date he was produced in Court.

5. The Appellant should not have been thrown out of the Court by the dismissal of his leave application as if no affidavit was filed. Admittedly he was behind bars at the relevant time yet he attempted to file application to obtain leave within the prescribed time i.e. 10 days with supporting affidavit. The application was initially supported by affidavit of his counsel who was given Vakalatnama having not been objected; later on the production order when he was produced; he swore his own affidavit on 01.03.2022, hence, we disagree with the understanding of law as disclosed in the impugned order. The leave to defend application ought to have been decided on merits and only then matter could have proceeded further.

6. We therefore, allow this appeal and remand the matter back to the trial Court. The leave to defend application be deemed to be pending, to be heard afresh by the learned trial Court. R&PS be sent back to the learned trial Court.

JUDGE

JUDGE