

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.480 of 2024

Dalal and Supariwala
Versus
The Karachi Port Trust

High Court Appeal No.481 of 2024

Hakimsons (Impex) (Pvt.) Limited
Versus
The Karachi Port Trust

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:

Mr. Justice Muhammad Shafi Siddiqui, CJ
Mr. Justice Jawad Akbar Sarwana.

1. For orders on CMA 2932 & 2935/2024.
2. For orders on office objection a/w reply as at "A"
3. For orders on CMA 2933 & 2936/2024.
4. For hearing of main cases.
5. For orders on CMA 2934 & 2937/2024.

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Dated 15.11.2024

Mr. Abdul Ghaffar Khan, Advocate for Appellants in both Appeals.

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Muhammad Shafi Siddiqui, CJ: Per title of the impugned order dated 04.11.2024 in these two Appeals, it appears that two consolidated suits bearing Nos.1329/1999 and 739/1999 were pending as suits for specific performance, filed by the Appellants against the Karachi Port Trust. On 02.03.2018 a common order was passed in both suits as under:-

"02.03.1018

*Mr. Abdul Ghaffar, Advocate for plaintiff.
Mr. Shaiq Osmani and Ms.Ayesha Sarfaraz, Advocates.
Mr. Abdl Razzaq Advocate.*

It appears that vide order dated 22.05.2002, passed in Suit No.659 of 1999, this suit was consolidated with the said suit and consolidated issues were framed by the Court and the matter was referred to the Commissioner i.e. Mr. Moin Azhar Siddiqui Advocate for recording evidence of the parties, who returned the Commission vide report dated 08.05.2017 filed in Suit No.659 of 1999, stating therein that the plaintiff has failed to file affidavit-in-evidence; therefore, side of the plaintiff has been closed.

The learned counsel for the plaintiff states that the learned Commissioner had no power to close side of the plaintiff; therefore, the order for closing side of the plaintiff is without jurisdiction.

It appears that no application for opening side of the plaintiffs has been filed. On the last date of hearing counsel for the plaintiff sought time for filing objections to the Commissioner's report dated 08.05.2017 but the same have not yet been filed, which reflects that the plaintiff has lost interest in pursuing the instant suit. Accordingly, the same is dismissed for want of evidence."

2. The said order was then followed by an order dated 01.10.2024 when application bearing CMA No.13941/2024 under Section 151 CPC for interim relief in a dismissed suit was fixed along with an urgent application bearing CMA No.13940/2024 wherein the learned Single Judge observed that the suit was dismissed for want of evidence on 02.03.2018 and that no appeal against the said order was filed, rather an application under Order-IX Rule-9 CPC has been preferred for restoration (which was not fixed as no request made); the interim relief sought in the dismissed suit was then declined and consequently on 04.11.2024 applications bearing CMA Nos.4953/2018 and 4955/2018 under Order IX Rule-9 CPC were considered to be misconceived and dismissed with cost of Rs.5000/- to be deposited with the High Court Clinic.

3. We have heard learned counsel and perused the record.

4. The primary contention of the Appellants was that originally the action of the learned Commissioner (order dated 02.03.2018) while closing side of the Plaintiffs was without jurisdiction as he was not entrusted with such powers to close the side of the Appellants/Plaintiffs. We do not agree with such understanding of law as when the Commissioner was entrusted with assignment to record evidence instead of Court, he was entrusted with all such powers including closing side of the witnesses (unless otherwise expressed in the order); whether or not the witness appear for the purpose of examination-in-chief and/or cross-examination and also to summon the witnesses from amongst the witnesses shown in the list of witnesses. It cannot be presumed that the Commissioner when

entrusted with powers to record evidence will be handicapped to proceed with the matter and would be referring the matter to the Court on each and every occasion to seek guidance. It is presumed and rightly so that when the Commissioner is entrusted with the powers, he is entrusted with all powers as being exercised by a Court while recording evidence only in the matter. In a similar situation, when evidence of Plaintiff's witnesses is concluded, the Commissioner does close the side before he could ask the defendant to bring their witnesses; (done without further indulgence of Court), to this power, as being exercised by Commissioner, counsel had no answer.

5. The second contention of the learned counsel is that they approached the wrong forum by filing applications under Order-IX Rule-9 CPC and that the appellants could not be penalized for approaching the wrong forum. On this count also we are not convinced as far as the wrong advice given to the appellants, is concerned. The appellants are well within their rights to pursue their actions as far as any wrong advice is concerned.

6. The suits were dismissed for want of evidence on 02.03.2018, whereas, the applications under Order IX Rule 9 CPC were filed on 30.03.2018. Even if the belated/no court fee issue is ignored, it could not have been considered as an appeal (as requested) since applications too were filed belatedly after the lapse of statutory period required to file an appeal. Appellants consumed almost 28 days which is much beyond the limitation prescribed for filing High Court Appeal under Law Reforms Ordinance.

7. In view of the above, the instant Appeals are dismissed in *limine* along with listed applications.

CHIEF JUSTICE

JUDGE

Ayaz Gul