

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI.

High Court Appeal No.428 of 2022

Date

Order with signature of Judge

1. For orders on office objection a/w reply at "A".
2. For hearing of main case.
3. For hearing of CMA 4329/2023.

27.01.2025.

Messrs Amel Khan Kanshi and Yawar Burki, for appellants.
Mr. Muhammad Rizwan, for respondents.

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In respect of an order dated 18.11.2022 the appellants have filed this Appeal demonstrating therein that the reasons for disposing of CMA No.10832/2021 have not been provided.

We have heard learned counsel and perused the material available on record. On 18.11.2024 there were two applications fixed for hearing before learned Single Judge. The application at serial No.1 i.e. CMA No.10832/2021 was an application under Section 94 read with Section 151, CPC, whereas at serial No.2 the application was CMA No.10833/2021 for attachment before judgment under Order XXXVIII, Rule 5 and Section 151, CPC. The reasons have been provided in dismissing the application under Order XXXVIII, Rule 5, CPC and rightly so as the affidavit in support of the application does not fulfill requirement of Order XXXVIII, Rule 5, CPC. Learned counsel for the appellants has conceded to such an extent, however, submits that the other application that seeks direction for depositing arrears of rent has not been disposed of by way of reasons.

We have perused the impugned order and perhaps learned counsel for the appellants is absolutely right. The application seeks deposit of arrears of rent of certain months and the respondents' counsel in terms of his response to the memo of Appeal has only demonstrated that he was exempted (as claimed) to pay rent(s) for the period of eight (8) months (6+2) during the period for the renovation, however, he has not demonstrated as to why this exemption could be extended to a period of nine (9) months in addition to eight (8) months as there were seventeen (17) months altogether.

Without adjudicating such controversy as to the respondents being under the obligation or otherwise to deposit the rent and as agreed by learned counsel, we restore CMA No.10832/2021 with the understanding that application be heard and decided independently and be disposed of with the reasons.

The Appeal stands disposed of in the above terms.

Chief Justice

Judge

Ayub