

IN THE HIGH COURT OF SINDH AT KARACHI
First Appeal No.56 of 2022

Present:

Mr. Justice Zafar Ahmed Rajput
Mr. Justice Arshad Hussain Khan

Appellant : Muhammad Yahya Akbar, through
Mr. Kalim Ali Mahsood, Advocate.

Respondent No.1 : Muhammad Rashid Khan, through
Mr. Muhammad Ahmar, Advocate.

Respondent No.2 : XIth Additional District Judge, Karachi-East
(*Nemo, being proforma party*).

Date of hearing : 22.01.2025
Date of decision : 22.01.2025

J U D G M E N T

ZAFAR AHMED RAJPUT, J: This First Appeal, under section 96, C.P.C., is directed against the judgment, dated 23.04.2022, whereby the learned XIth Additional District Judge, Karachi-East (“**Trial Court**”) decreed the Summary Suit No.120/2021 (“**Suit**”) filed by Respondent-*Plaintiff*.

2. Learned counsel for the Appellant-*Defendant* contends that the impugned judgment and decree have been passed by the Trial Court without properly applying its judicial mind and appreciating the legal position of the case; as such, the same are not sustainable in law; that the Appellant was confined in judicial custody from 16.11.2021 to 26.11.2021, therefore, he was not in a position to file the Application for Leave to Defend (“**Application**”) within stipulated period of 10 days from the date of service, although he engaged a counsel, due to the lack of necessary instructions; that the impugned judgment and decree have been passed by the trial Court in a cursory manner, without examining thoroughly the nature of the controversy between the Appellant and Respondent No.1.

3. Conversely, learned counsel for Respondent No.1 fully supports the impugned judgment and decree by maintaining that ample opportunities were given to the Appellant to file the Application; however, he failed to do so. He, while inviting the attention of this Court towards the contents of the application for recalling the order, dated 11.01.2022, and reopening the Defendant's side, further maintains that even the ground taken by the counsel of the Appellant in the said application is that he was unable to file the Application due to the rush of work and election campaign, which is not a valid and cogent ground for non-filing of the Application within the stipulated period.

4. Heard. Record perused.

5. It appears from the perusal of record that the Suit was filed by Respondent No.1 on 13.10.2021, while on 16.11.2021 the Appellant was remanded to judicial custody in Criminal Appeal No.17/2021, passed by the IInd Additional Sessions Judge, Karachi South, and thereafter he was released from judicial custody on 26.11.2021. However, prior to being remanded to judicial custody on 10.11.2021, Mr. Barkat Ali Advocate filed a *vakalatnama* on his behalf in the Suit. Subsequently, on 15.11.2021, he received a copy of the memo of plaint for filing the Application. Thereafter, on 26.11.2021, he failed to make his appearance, and the matter was adjourned by the Trial Court for the same purpose, i.e., for filing the Application to 04.12.2021; on which date, the junior counsel for the Appellant filed an application for adjournment, and the Trial Court adjourned the matter to 15.12.2021 for the same purpose. On that date, the advocate for the Appellant was absent, and again the Trial Court adjourned the matter for the same purpose to 11.01.2022, on which date, the counsel for the Appellant again remained absent. Consequently, the trial Court directed the learned counsel for the Respondent No.1-Plaintiff to file Affidavit-in-Evidence along with relevant documents and, thereafter, the Suit was decreed by the Trial Court ex-parte vide impugned judgment & decree.

6. It reflects from the record that the Appellant, from date of receiving copy of the memo of plaint i.e. 15.11.2021 to 11.01.2022, availed 55-days and from date of his release from judicial custody i.e. 26.11.2021 to 11.012022 availed 45-days, but he failed to file the Application despite availing a number of opportunities, which shows that, in fact, he had no ground to oppose the Suit. Hence, the Trial Court rightly passed the impugned judgment and decree, which require no interference by this Court under its appellate jurisdiction. Consequently, this First Appeal is dismissed being devoid of merit, along with pending application(s), with no order as to costs.

JUDGE

JUDGE

Tahseen/PA