

IN THE HIGH COURT OF SINDH AT KARACHI**Suit No. 531 of 2009****Muhammad Zahid Khan** **Plaintiff**

Versus

Mrs. Razia Yousuf & 11 others **Defendants**

Mr. Usman Tufail Shaikh Advocate for Plaintiffs
M/s. Saathi M. Ishaque, S.K. Lodhi and Ms. Faryal Ishaque Advocates
for Defendant No.7

Mr. Abdul Razzaq Advocate for Defendant Nos. 1 to 15

Date of hearing : 18th September 2024

Date of Order : ____ October 2024

ORDER ON CMA NO. 10476 of 2024

Omar Sial, J.: This customary application has become highly contentious. The Plaintiff has prayed for the appointment of a commission to record additional evidence supporting specific issues framed by this Court. Defendant No.7 has vehemently opposed and filed a counter against which a rejoinder also has been filed by the counsel for Plaintiff.

2. I note that initially when issues were framed, a commission for recording evidence was appointed via a consent order dated 28.08.2014. (this was also challenged in appeal H.C.A. 250/2014 by Defendant No.7 and was eventually dismissed as infructuous via Order dated 17.01.2017). However, when it was the turn of Defendant No.7 to cross-examine Plaintiff, she failed to do the needful despite various opportunities having been provided. Accordingly, her right to

cross-examination was revoked via an Order dated 19.12.2014. Subsequently, her side of the evidence was also closed on account of her failure to file the requisite affidavit in evidence. After that, she preferred several applications which culminated in the filing of an HCA No. 173/2015 by her. According to Judgement dated 13.02.2017, the Divisional Bench imposed costs but afforded her a final opportunity to cross-examine the witness and lead her evidence. This she again failed to do. Her reason was that she did not have confidence in the Commission and wished that her evidence be recorded in Court. The counsel for the Plaintiff conceded to this request, and via Order dated 15.05.2018, it was decided that the remaining evidence would be concluded in Court. That conclusion has still not seen the light of the day despite the lapse of six years.

3. Via Order dated 25.11.2021, additional issues were framed, and evidence is now required to be adduced against those for which the instant application has been filed. Defendant No.7 has mainly opposed the application because (i) the evidence would be tampered with, (ii) Plaintiff had given his consent for discharge of the Commission, which is recorded in Order dated 15.05.2018, and (iii) Defendant No.7 never hired a counsel to appear on her behalf.

4. The above objections may have amounted to specific considerations. However, Defendant No.7 has used dilatory tactics throughout these proceedings to delay the claim adjudication. If I deny this application, the process may stand even more drawn out.

5. I also note that via HCA No. 173/2015, Defendant No.7 was given a last and final chance to tender her evidence via an Order dated 13.02.2017. It has been seven years, and that has not happened.

6. I am conscious that the Code of Civil Procedure, 1908, does not necessarily provide for the appointment of a commission in the above situation. However, section 151 of the Code vests this Court with inherent powers *"to make such orders as may be necessary to meet the ends of justice or to prevent abuse of the process of the Court."* If I disallow this application, I would be jeopardizing the ends of justice by protracting the matter for much longer, thereby jeopardizing the administration of justice. I find support for my reasoning in the case law reported in **Syed Farruh Mazhar v. SSG Headquarters (PLD 2018 Sindh 327)**.

7. Accordingly, this application is allowed, and Mr. Dilawar Hussain is appointed Commissioner against a fee of Rs.35,000 per witness. The earlier order dated 15.05.2018, whereby the evidence was to be recorded in Court, is recalled. The Commissioner is directed to complete the exercise within three months positively. The Commissioner shall have the power to impose costs on any party seeking recurring adjournments and shall be empowered to close the side of evidence of any party that unjustly delays the process.

JUDGE