

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.207 of 2001

Date Order with Signature of Judge

Mrs. Farzana *Plaintiff*

Versus

Qamran Constructions (Pvt) Ltd and another *Defendants*

Dates of hearing : 03.02.2025

Date of order : 03.02.2025

Mr. Waqas Asad Sheikh, advocate for the plaintiff.
Mr. Liaquat Zaman Khan, advocate for the defendant No.1.

ORDER

MUHAMMAD JAFFER RAZA, J :- Through this order I shall be deciding CMAs bearing Number 18412/2024 (under Order XXVI Rule 2 CPC) and No.1443/2025 (under Order XI Rule 13 CPC read with Article 84 of the Qanun-e-Shahadat Order 1984).

CMA No.18412/2024

(2). That application bearing CMA No.18412/2024 has been filed by the defendant No.1 essentially seeking recording of fresh evidence before the learned Commissioner. The prayer is reproduced below: -

“It is therefore humbly prayed that this Hon’ble may kindly be pleased to appoint fresh Evidence Commissioner for recording

evidence of the Defendant No.1 and also allow the Defendant No.1 to cross examine the Plaintiff for proper adjudication of matter on merits.”

The said application was presented before this Court on 16.12.2024. Thereafter, the defendant No.1 moved an urgent application along with CMA No.18412/2024 and was put to notice regarding maintainability of the said application particularly considering the fact that the suit of the other claimant, namely, Asghar Ali bearing No.1345/2005 has already been dismissed for non-prosecution. Learned counsel for the defendant No.1 was again put to notice to satisfy on the maintainability of the application on 30.01.2025. Finally, the matter came up for hearing on 03.02.2025, wherein, the said applications were dismissed for the reasons to be recorded later.

2. Record of the case reveals that instant suit was consolidated with Suit No.1345/2005 vide order dated 10.05.2010, the relief sought in both the suits was essentially of the same nature and against the same defendant. Issues were framed on 09.05.2011 and subsequently, learned Commissioner was appointed for recording of evidence on 13.09.2012. The record also reflects that the defendant No.1 (Qamran Constructions (Pvt) Ltd.) appeared before the Commissioner but chose not to file their affidavit-in-evidence and also failed to cross examine the Plaintiff. The Commissioner upon conclusion filed his report on 09.07.2015, which was taken on record vide order dated 21.12.2017. My attention is also invited to the order dated 11.01.2019 in Suit No.1345/2005, whereby, the learned counsel (presently appearing for defendant No.1) categorically stated that he has received a letter from his client and they do not wish to continue his services in future, the said application was allowed on 11.01.2019.

3. It is most astonishing that the defendant No.1 has woken up from his deep slumber after gap of approximately five years and at this stage of the proceedings wishes to examine his witnesses and record evidence. It is also noteworthy that the said Defendant having disengaged his counsel (as reflected in order dated 11.01.2019) has now re-appointed the same counsel to plead his case. In the entirety of this period, spanning nearly half a decade, the said Defendant made no apparent effort to engage a pleader. Such callous conduct on behalf of the Defendant No.1 cannot be condoned and it will be unconscionable to permit the said Defendant to lead evidence at this stage.

4. It is a well settled principle of law that some cogent and plausible reason ought to be advanced for granting of such application. The counsel for the defendant No.1 was repeatedly asked about any cogent reason for this incomprehensible delay. However, in reply the learned counsel only extend his personal circumstances as a reason for the same. It was also specifically enquired whether there was any impediment in the Defendant No.1 in appointing another pleader. In reply the learned counsel reiterated his personal circumstances and failed to give any reason (cogent or otherwise) in reply to the said question.

5. It is also well settled that the law favours the vigilant and not indolent, and recording of fresh evidence at this stage would only delay the matter endlessly. It will not be out of place to mention the Latin maxim “Vigilantibus Non Dormientibus Jurs Subveniunt” which articulates that the law will not help those who sleep on their rights¹. Generally, the law favours a decision on merits and not technicalities. However, in the present case I am unable to exercise my discretion in favour of the Defendant No.1 for the reasons which have been elaborated hereinabove.

¹ CIVIL PETITION NO.469-L OF 2023 Regional Police Officer, Dera Ghazi Khan Region, VERSUS Riaz Hussain Bukhari.

CMA No.1443/2025

(1) In the application bearing CMA No.1443/2025, learned counsel for the defendant No.1 has sought direction against the plaintiff to produce certain original documents before the Commissioner. The application being entirely dependent on the CMA 18142/2024 warrants no merits and is hereby dismissed.

For the foregoing reasons I had dismissed CMA 18142/2024 and CMA 1443/2025 and these are the detailed reasons for the same.

Judge

Nadeem