

IN THE HIGH COURT OF SINDH, KARACHI

I.A.No.33 of 2017

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

1. For hearing of main case
2. For hearing of CMA No.4247/2010

24.02.2025

Shaikh Jawaid Mir, advocate for the appellant.

None present for the respondent.

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J U D G M E N T

MUHAMMAD IQBAL KALHORO, J:- This first appeal has been filed by appellant against an order dated 26.08.2010 dismissing his application for leave to defend a Summary Suit No.62 of 2006 filed by respondent against him in the court of Vth Additional District Judge Karachi, South. Learned counsel for defendant has chosen to remain absent.

2. Learned counsel for appellant has argued that on the basis of a discrete enquiry from the bailiff, his application for leave to defend the suit was treated as time barred and leave was refused. He has further submitted that he had not only filed an application for seeking leave to defend the suit but at the same time had filed an application under section 10 CPC to stay the suit on the ground that the applicant had earlier filed a suit against the respondent which had been decreed in his favour. According to him, the court was required to first decide such application and in this regard, he has relied upon the case law reported as PLD 1987 Karachi 102.

3. We have considered submissions and perused material including the impugned order. A reading thereof reflects that on the basis of some discrete scrutiny/enquiry in the wake of bailiff's report in which his statement was recorded, the trial Court formed an opinion that there was some tampering on the dates mentioned in the summons issued to defendant/appellant and such tampering was done with the sole object of bringing the application for leave to defend the suit within stipulate time of 10 days. What is however surprising is that the appellant was not privy to any such discrete scrutiny / enquiry nor he was present at the time when statement of bailiff to that effect was recorded to vice his point of view and rebut the assertions of the bailiff which have cost him his right to defend the suit. Further, the learned trial court has not mentioned in the order whether such tampering was caused by

the bailiff or by the appellant himself with a view to extend time for filing application for leave to defend the suit. In the impugned order, there is nothing to show who has been held responsible for such tampering, nor any action has been proposed against any one including the bailiff, if he was responsible for causing tampering in the dates mentioned in the summons so as to bring the case of defendant within time limit. Prima-facie on the basis of such discrete enquiry, nothing has been concluded as to who has committed such tampering and what are its consequences. But then at the same time the learned trial Court has proceeded to non-suit the appellant from defending the suit on the basis thereof, which is nothing but a miscarriage of the justice.

4. We therefore of the view that the impugned order is not sustainable in law and is accordingly set aside. As a result the matter is remanded to the trial Court to hear the application for leave to defend the suit on its merits alongwith any other application filed by appellant for any relief including an application for staying the suit u/s 10 CPC, if filed expeditiously, and decide the same within a period of two months from today. All the parties should be given a fair opportunity of hearing for deciding such applications.

5. First Appeal is disposed of alongwith listed application in view of above terms.

JUDGE

JUDGE