

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
H.C.A. No.315 of 2024

Date	Order With Signature Of Judge
------	-------------------------------

1.For order on office objection a/w reply at A
2.For hg of main case

10.03.2025.

Mr. Qayoom Nawaz Kundi, advocate for appellant.
Syed Aijaz Hussain Shirazi, advocate for respondent No. 1.

MUHAMMAD IQBAL KALHORO, J:- This appeal impugns an order dated 19.08.2024, passed by learned single Judge, dismissing the suit under Order 17 Rule 3 CPC due to failure of plaintiff/appellant to lead evidence despite chances given.

2. Record reflects that plaintiff/appellant filed a suit for declaration, mandatory injunction, permanent injunction and recovery with consequential relief in 2008 seeking following relief(s):-

i). It is, therefore most respectfully prayed that a Decree may kindly be passed in favour of the plaintiff and against the defendant declaring that the impugned letters dated 03-07-2008 issued by the defendant No.2 is malafide, ilfegal, void, against the terms and condition of the letter of intent and without lawful authority and the same has no effect on the rights of the plaintiff.

ii). It further prayed that a Decree of Mandatory Injunction may kindly be passed against the defendant No. 1&2 to pay the outstanding bill dated 25-06-2008, amounting to Rs.42,29.881.00 (Rupees Forty Two Lacs, Twenty Nine Thousand and Eight Hundred, Eighty One), so as work may be started and complete as soon as possible without any further delay.

iii). It is further prayed that plaintiff may be allowed to withdraw the guarantees from the defendant No.4 and he be released form any ensuing liability, if any.

iv). It is also prayed that a decree for recovery of Rs.50,00,000/- approximately (including guarantees) may kindly be passed in favour of plaintiff and against the defendants.

v). It is further prayed that the decree be passed declaring the contract having been frustrated due to in action on the part of the defendants coupled with intervening circumstances, which were beyond the control and power of the plaintiff.

vi). It is further prayed that the defendant No.1&2 may be restrained permanently from encashing the guarantees lying with the defendant No.4 in any manner.

vii). Any other relief, which this Hon'ble Court may deem fit and appropriate, may also be granted to the plaintiff, the interest of justice, fairness and equity.

3. During the course of trial, the issues were framed and on 29.08.2023 an Advocate was appointed as Commissioner to record evidence, he submitted the report on 25.05.2024 stating that plaintiff/appellant had failed to lead any evidence; hence, he may be discharged.

4. When plaintiff/appellant was asked by learned single Judge about a reason of not leading the evidence, he submitted that in Suit No.1001/2008, he had filed some application for consolidation of the two suits; hence, he did not lead the evidence. This ground was not accepted by the learned single Judge. Since there was nothing on the record to be considered as evidence etc. of the plaintiff/appellant he proceeded to dismiss the suit under Order 17 Rule 3 CPC.

5. Learned counsel for appellant has reiterated the same facts in his arguments stating that because of pendency of application in another suit for consolidation of the two suits, he did not lead the evidence.

6. On the contrary, learned counsel for respondent No. 1 has submitted that the very suit bearing No.1001/2008 was dismissed in non-prosecution in 2021; hence, the escape from leading the evidence was neither sustainable, nor justified.

7. We have considered submissions made by the learned counsel for the parties and perused material available on record. Learned counsel for plaintiff/appellant has not disputed the fact that the Suit No.1001/208, in which, he had filed an application for consolidation of the two suits had already been dismissed in non-prosecution. Yet, in reply, he has insisted that he has filed an application for restoration of

the same. Be that as it may, at the time when he was called upon to lead the evidence, the suit under the garb of which he tried to avoid leading evidence was not pending on the file of the Court. Filing of a restoration application does not mean that the suit would be deemed to be pending.

8. More so, the ground that he had filed some application in another suit seeking consolidation of the two suits would not provide him a solid basis to warrant evading his evidence in the suit. The commissioner for recording evidence was appointed on 29.08.2023 when the other suit was no more alive. At the time of such order, the plaintiff/appellant did not try to stop the learned single Judge from appointing the commissioner, nor he challenged the same in a High Court Appeal with the request that evidence shall not be led until and unless his application in the suit, which was already dead, has been decided. On the contrary, the Commissioner was appointed with his full knowledge and he was called upon, without his objection, to lead the evidence. That order, it is apparent, he deliberately failed to comply with and adduce evidence. Meanwhile, also, he did not move any application before learned single Judge asking for stay or any other interim order stopping the Commissioner from recording the evidence.

11. We, therefore, do not find any illegality or error in the impugned order to justify its reversal in this appeal. Consequently, we find this appeal to be without any merit, and accordingly dismiss it.

JUDGE

JUDGE

HANIF

