

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

R.A. No.69 of 2014

Clifton Cooperative Housing Society & another  
Versus  
Ghulam Hussain Bhatti & another

| Date | Order with signature of Judge |
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1. For orders on CMA 3538/14
2. For hearing of main case.
3. For hearing of CMA 3540/14

Dated: 30.01.2018

Mr. Muhammad Iqbal Memon for applicants.  
Mr. Mustafa Lakhani for respondents.

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Muhammad Shafi Siddiqui, J.-This Revision Application is arising out of conflicting judgment of two Courts below. The trial Court dismissed the suit on merits after maintaining the suit with reference to the notice under section 70 of the Cooperative Societies Act, 1925. As against the judgment and decree of the trial Court the respondents filed an appeal, which was entertained and after discussion the appellate Court in paragraph 11 of the judgment observed that the respondents have not been able to establish their case of damages to the tune of Rs.2 Million and has observed that he (respondent No.1) would be compensated in the shape of suit being decreed in terms of prayer clause 'b'. Since the text is ambiguous, the relevant para is reproduced as under:-

*"11. In the light of above guided principles, I've anxiously gone through the evidence of the parties, and see that the claim of the appellant concerning the alleged damages, only basing upon oral evidence, without any supporting evidence in shape of documentary and/or leading evidence of his witness. To be true, the appellant had suffered by the aforesaid act of the respondent No.1, yet the former has not been able to establish his claim to the tune of claimed amounting Rs.20,00,000/- as such, the*

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*appellant is being compensated by in the shape that the suit of the appellant is decree as under with costs."*

I have heard the learned counsel and perused the material available on record.

No doubt the respondent No.1 was not able to prove his case of damages yet it cannot be an automatic choice of the appellate Court as to decreeing the suit in terms of prayer clause 'b' which relates to the payment of maintenance charges by the allottees.

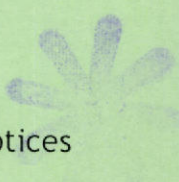
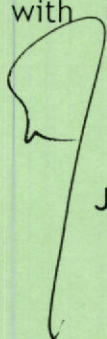
The Society who has filed this Revision Application has presented the audit report showing outstanding amount towards maintenance charges as Rs.2,20,000/- at the relevant time. In the cross-examination respondents/witness has conceded that he has made the payment insofar as the maintenance charges are concerned however he has voluntarily stated that receipts have not been issued. The findings of the appellate Court ought to have been based on the depositions which are on record however nothing has been discussed by the appellate Court insofar as the determination of this issue of payment of maintenance is concerned. Audit report may not have disclosed other's name as they might have paid the amount. It is also surprising to note that even findings of the trial Court in relation to Issue No.2, which touches the payment of maintenance charges, have not been discussed by the appellate Court at the time of reversing.

In view of above, I deem it appropriate to refer/remand the matter back to the appellate Court as to the decision on Issue No.2 regarding payment of maintenance in the light of the evidence available on record, in particular the cross-examination of respondent No.1. The impugned decision to the extent whereby the suit was decreed in terms of prayer clause 'b' only is set aside. The appellate Court shall hear the parties and decide the controversy arising out of the pleadings with reference to Issue No.2, as framed by the trial Court, within four weeks

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from today with report to MIT-II of this Court. No Court motion notices are required to be issued to the parties who are directed to be present before the appellate Court on 10.02.2018. The R & P be sent to the concerned Court.

Revision Application stands disposed of along with listed applications in the above terms.

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Judge

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI.**

RA NO. 69 OF 20 14

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|      | <p style="text-align: center;"><u>For directions</u></p> <p>* <u>For orders on MIT-II Report dated 15/3/2018, and dated 10/4/2018.</u></p> <p><u>28.5.2018</u> None present for applicant<br/>Mr. Mustafa Rakhani for respondent.</p> <p>In pursuance of the order of this Court the VIII Additional District Judge Karachi (South) has submitted compliance reports, which is taken on record.</p> <p style="text-align: right;">Judge</p> |