

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
R. A. No. S – 166 of 2010

Date of hearing	Order with signature of Judge
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Hearing of case (priority)

1. For hearing of main case
2. For hearing of CMA No.570/2010

30-11-2020

Mr. Ghulam Shabbir Dayo, Advocate for the applicants.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

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In this revision application, the applicants have challenged the order dated 04-08-2010 as passed by the learned Court of Ist Additional District Judge, Ghotki on application under Order IX Rule 9 CPC filed by the present applicants. It seems that the respondents in the matter had affected their appearance in the matter lastly in the year 2014, and thereafter, they have preferred not show appearance. Be that as it may, on the last date of hearing, fixed date of today was given, and as such matter is proceeded based upon the record as present along with the assistance as was forthcoming.

2. Learned counsel for the applicants contends that the impugned order passed on the application under Order IX Rule 9 CPC was during the process of consideration of application under Section 12(2) CPC, whereby the fraud and misrepresentation brought on part of the private respondents was challenged, to which issues had been framed and the matter was fixed for evidence. However, on the previous date an imposition of cost of Rs.500/- was made on account of present applicants not producing evidence which was brought by the applicants on the date when the impugned order was passed, however, the learned Court was pleased to dismiss the application under Order IX Rule 9 CPC, and such

dismissal is not available where the accompanying affidavit to the said application of Order IX Rule 9 CPC clearly stated that Rs.500/- were brought up by the applicants for payment and the presence at the time when the case was called was not on account of deliberate avoidance. Learned counsel in this regard has referred to the said pleadings as present on record.

3. Learned AAG having gone through the pleadings prefers not to object to the remand of the revision, however, subject to payment of the cost as was imposed.

4. Having heard the learned counsels and gone through the record with the assistance as available, it bears therefrom that in the impugned order no reference to the payment has been made, as such it is quite obvious that the said order has been passed without going through the pleadings as present on record.

5. In the present circumstances, this revision application stands **allowed**. Matter is remanded before the learned Court who has passed the impugned order, however, subject to payment of cost of Rs.500/- as was imposed, and as such the application under Section 12(2) CPC shall be deemed to be pending.

This revision application stands **disposed of** in the above terms.

J U D G E

Abdul Basit