

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
1st Appeal No.13/2013

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

- 1.For order on CMA No.1625/2013
- 2.For order on CMA No.1626/2013
- 3.For katcha peshi

10.5.2014

Syed Ali Kausar Shah, for Appellant
M/s Syed Masroor Ahmed Alvi and Nazia Hanif, for respondent No.3

1. This appeal has arisen out of the order of rejection of plaint of Suit No.336/2009 passed by the Court of 1st Senior Civil Judge, Karachi Central by order dated 31.7.2009 and upheld by the Court of 1st Additional District Judge, Karachi Central in Civil Appeal No.69/2009 by judgment dated 05.8.2011. The instant appeal was presented on 21.2.2013 and, therefore, appellant was constrained to file an application under section 5 of the Limitation Act for condonation of delay in filing this appeal. The respondents have not filed any counter affidavit. This application is supported with a complaint addressed to the President and General Secretary, Karachi Bar Association against the counsel for the appellant Mr. Ikram-ul-Haq, Advocate who had been representing the appellant before the trial Court and the first appellate Court. This appeal is also supported by an affidavit, in which he has given the details of professional misconduct of his counsel to the extent that the counsel never disclosed about the dismissal of appeal to the appellant. Therefore, in view of these facts, the appellant has fully accounted for the delay in filing of this appeal as the circumstances were not within the control of the appellant to file this appeal in time. This application is allowed and the appeal is ordered to be treated as within time.

2. Granted subject to all just exceptions.

3. Counsel for the appellant has contended that both the Courts below have erred in law by refusing to decide the suit of the plaintiff on merits. The provisions of Order VII Rule 11 CPC have been wrongly applied in the present case as the civil Court once seized of a matter, in which fundamental rights of the plaintiff about his father name in official record was required to be corrected as it may cause some legal complication for the plaintiff in future. The Court can pass declaratory decree and direct the respondent for rectification of such like mistake that what is the correct name of his father etc. If it is allowed to be continued in official record it may have far reaching legal complication. He further contended that in this case, no right and interest of respondent No.3 can be disturbed by making a necessary correction in the record of Board of Secondary Education.

Learned counsel for respondent No.3 has supported the concurrent findings of rejection of the plaint on the ground that the plaintiff has not been able to disclose a legal character for maintaining a suit in terms of section 42 of the Specific Relief Act and suit against Board of Secondary Education is barred by Section 27 and 29 of this Ordinance of 1962.

I have heard the arguments of learned counsel, examined the plaint and the documents filed by the appellant with the plaint.

There is no denial of the fact that the appellant's mother Mst. Tabbassum is the wife of Baqaullah Shaikh and daughter of Jaffar Ali. The appellant alongwith the plaint has filed a copy of registered Nikahnama of his mother, wherein his mother's father's name is 'Jaffar Ali' and name of her husband is 'Baqaullah Shaikh'. The learned trial Court has not examined the Nikahnama. The circumstances, in which by mistake name of maternal grandfather was mentioned in the School record as name of father of the appellant has very elaborately been disclosed by the appellant and supported by the affidavit of his mother Mst. Tabbassum Baqaullah. But the trial Court refused to look into these documents, which clearly shows that the record maintained by the Board of Secondary Education was factually incorrect and the fatherhood of the appellant and his mother cannot be one and the same. Once such

document has come to the notice of the Court through the plaint, it was bounded duty of the trial Court to have reconciled the record of Board of Secondary Education with that of the correct name of the father of the appellant in view of the Nikahnama available on record. The Board of Secondary Education failed to apply its mind to the request made by the appellant through a proper application dated 18.4.2009, wherein the ingredients of the plaint and the circumstances mentioned in the plaint had been brought to the notice of the Board of Secondary Education and regrettably the Board of Secondary Education without assigning a cogent reason declined the request in the following terms: -

*“Subject: REQUEST FOR CHANGE OF NAME/
FATHER’S NAME/ROLL NO.502242 YEAR 2002 DATE
OF BIRTH.*

*Reference your application dated 18.4.2009 on the subject
mentioned above, I am directed to inform you that your
request can not be acceded to as per Rule of the Board.*

*Sd/-
Dy/Asstt. Secretary
Superintendent
Certificate Section”*

The Board of Secondary Education in their refusal to correct the record did not mention the rules of Board before the trial Court, which restrain them from making any correction in the record. However, they have wrongly relied on sections 27 and 29 of the Board of Intermediate and Secondary Education Ordinance, 1962 to seek dismissal of suit as barred. The learned appellate Court failed to appreciate that section 27 of the Ordinance, 1962 does not mean that the Board of Secondary Education is a final authority and order passed by the Board is not subject to review by the Courts. The Section 29 of the said ordinance stipulates that no suit for damages or other legal proceedings shall be instituted against government and any member of the Board or Committee. In the suit filed by the plaintiff no decision or order was under challenge nor the appellant has claimed any damages against the controlling authority or member of the Board etc. It was a simple suit for correction in the relevant record of the Board of Secondary Education to the extent that the appellant, is son of Baqaullah Shaikh and not of Jaffar Ali, who in fact is maternal grandfather. But in the column of name of father, the name of maternal grandfather

has inadvertently been mentioned in the school record. No matter it was by mistake of the mother of the appellant or by some other person, the Board was under obligation to make necessary correction once there was a satisfactory proof of mistake on the record showing name of maternal grandfather instead the name of father was placed on their record.

In the above circumstances, the very refusal of the Board of Secondary Education dated 18.4.2009 to rectify the mistake in the certificate issued by them was without any lawful justification. No reasoning has been advanced and the order by itself is not a speaking order. However, since the trial Court has passed order of rejection of plaint without proper trial which on the face of it appears to be contrary to the requirement of law, the orders passed by the trial Court and first appellate Court are hereby set aside and the case is remanded to the Court of 1st Senior Civil Judge, Karachi, Central, for deciding Suit No.336/2009 on merits after recording of evidence, if needed, in accordance with the law. If the Board of Secondary Education, has not filed written statement till the order on the application under Order VII Rule 11 CPC, was passed, they should file written statement on the first date of hearing before the trial Court, which is fixed as 17.5.2014. On the said date the Trial Court should either frame the issues if the written statement is already on record or on receiving written statement frame the issues on or before 24.5.2014. The evidence, if any, to be recorded, should be concluded on or before 15.7.2014 and a judgment on merit should be announced on or before 31.7.2014. The trial Court should meticulously observe the dates given in this order and compliance after every date is to be reported to this Court through MIT-II. These dates have been mentioned in the order only because the appellant has already lost his 05 years of life at the hands of different Lawyers who represented him. As already ordered, this appeal was time barred and the delay has been condoned. Even before this Court after filing of this appeal on 21.2.2013, the case was listed for non-prosecution and counsel did not bother to get even notices issued until 15.4.2014 i.e to say in one year and two months' time. And it was filed casually without looking into the relevant law. This

appeal should have been filed under section 100 CPC but on the face of it, this is an appeal under section 96 CPC, therefore even this mistake is also condoned and this first appeal should be treated as second appeal.

Before parting with this order, I feel it necessary to bring the suffering of appellant at the hands of his lawyers to the notice of Sindh Bar Council and direct the Council to examine the record of this appeal and R&P from the point of view of duty of lawyers towards their clients as envisaged under the **Legal Practitioners and Bar Council Act, 1973**, particularly Chapter II of the Canon of Professional Conduct and Etiquette dealing with lawyers’ “**Conduct with Regards to Clients**” and seek written explanation of each and every lawyer who represented the appellant since the date of filing of suit No.336/2009 so as to give them a wakeup call. Copy of such explanation may be provided to MIT-II of this Court showing compliance of this order by the Sindh Bar Council.

Copy of this order should be sent to the Secretary Sindh Bar Council and the Trial Court forthwith.

The counsel representing the parties should appear before the Court for Ist Sr. Civil Judge Central, Karachi on 17.5.2014 without waiting for a notice.

JUDGE