

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Civil Revision No.S-76 of 2019

Date	Order with signature of Judge
------	-------------------------------

1. For orders on office objections a/w reply at flag 'A'
2. For orders on 384/2019
3. For hearing of main case

Mr. Nazir Ahmed Junejo, Advocate for the applicant

Date of hearing: 28.05.2019

Date of order: 28.05.2019

ORDER

ZAFAR AHMED RAJPUT, J:- Impugned in this Civil Revision Application is the order dated 08.03.2019 whereby the learned Additional District Judge-II, Khairpur dismissed the application filed on behalf of applicant/appellant in Civil Appeal No.60/2017 for setting-aside the order, dated 02.04.2018, whereby the restoration application, dated 09.11.2017 filed on behalf of applicant was dismissed for non-prosecution.

2. Learned counsel for the applicant states that the Civil Suit bearing No.05/2013 filed by the applicant against the respondents for declaration and permanent injunction in respect of mosque namely Hyder-Karar and Madrasa known as Sadique Akbar-wa-Jamia Masjid situated at village Liyari, Taluka Kotdiji, District Khairpur was dismissed by the 3rd Civil Judge, Khairpur vide judgment dated 22.4.2017 and against that the applicant preferred Civil Appeal No.60/2017 which was dismissed by learned 2nd Additional District Judge, Khairpur for non-prosecution on 16.10.2017. However, on 09.11.2017 the applicant filed an application for restoration of the appeal but the same was dismissed by the appellate Court on 02.04.2018 for non-prosecution, but on the very next day viz. 03.04.2018, the applicant filed restoration application, which was dismissed by the learned appellate Court vide impugned order. He states that on 02.04.2018, the counsel for the applicant failed to make his appearance before the appellate Court

as he was not aware of the date of hearing which ground was specifically agitated in the accompanying affidavit but the learned appellate Court dismissed the application on the ground that no such affidavit of the appellant has been filed who was also called absent on the said date of hearing, hence the impugned order being not sustainable in the law is liable to be set-aside.

3. Heard learned counsel for the applicant and perused the material available on record.

4. The only ground agitated by the learned counsel for the applicant is that the counsel for the applicant was not aware of fixing of appeal on 20.3.2018. The case diary of said date is available in the case file at page 69, which reflects that on said date the applicant was absent so also his counsel but the clerk of the counsel was present and in his presence the matter was adjourned for 02.04.2018, on which date the counsel for the applicant/appellant failed to make his appearance before the appellate Court, resultantly his restoration application was dismissed for non-prosecution. Hence, the ground so raised in the restoration application is indigestible. When on the date of hearing the clerk of the counsel was present in the Court in whose presence the matter was adjourned for subsequent date, it can be comprehended that the counsel was having knowledge of adjourning of the matter from 20.03.2018 to 02.04.2018, but he failed to mark his presence on subsequent date of hearing, and thus the learned appellate Court rightly dismissed the restoration application of the applicant for non-prosecution.

5. The applicant and his counsel failed to show sufficient cause for their non-appearance when the restoration application was called on for hearing. Hence the impugned order does not suffer from any illegality or irregularity requiring any interference of this Court. Therefore this Civil Revision Application being devoid of any merit is dismissed in limine along with listed application.

JUDGE

Suleman Khan/PA