

IN THE HIGH COURT OF SINDH, KARACHI

**R.A.No. 116 of 2005**

**Present: Mr. Justice Nazar Akbar**

**Applicant** : **Ibrahim S. Suteria**  
**Present in person.**

**Respondent No. 1** : **Nawazish Ali Hakim**  
**Respondent No. 2** : **Mrs. Nayyar Jehan**  
**Through Mr. Zafar Iqbal Dutt,**  
**advocate.**

**Date of hearing** : **25.08.2016**

**Date of judgment** :

**J U D G M E N T**

**NAZAR AKBAR J.** This revision is directed against the order dated **07.03.2005** whereby IInd Additional District Judge, Malir, has been pleased to dismiss Civil Misc. Appeal No.04 of 2004 against the order dated **19.5.2004** passed by Sr. Civil Judge, Malir, by affirming dismissal of an application under Order IX Rule 9 CPC filed by the applicant for restoration of his suit No.167/2003 (Old No.749/1992). Both the courts below have dismissed the application for restoration of the suit dismissed for non-prosecution.

2. Brief facts of the case are that applicant filed suit for specific performance of agreement of sale dated **16.11.1989** in respect of agricultural land or in the alternative Rs. 5,00,000/- per acre as damages against respondents. Respondents filed written statement. On **19.11.1995** issues were framed/settled/adopted by the Court and the suit was fixed for evidence. However, after framing of issues, the applicant from **19.11.1995** to **06.10.1999** did not lead evidence

and on **6.10.1999** suit was adjourned to **12.10.1999** for applicant's evidence. On **12.10.1999** suit was dismissed for non-prosecution.

3. The Applicant after almost two years filed an application for restoration of suit and so also application under **Section 5** of the Limitation Act, 1908. The trial Court after hearing the parties dismissed the application under Order IX Rule 9 CPC by order dated **19.5.2004**. The applicants preferred Civil Misc. Appeal No.04/2004 which was also dismissed by appellate court order dated **7.3.2005**. Thereafter on **2.5.2005**, this Revision was filed against the concurrent findings.

4. On **30.11.2015**, Mr. Ajmal Awan undertook to file power on behalf of the applicant. Then, after three dates applicant attempted to get adjournment on the ground he wants to engage another counsel. His request was declined since this Revision was pending for 11 years and the applicant had filed his Suit in 1992, that is, 22 years ago. Therefore, he was asked to argue. Applicant has pointed out that restoration application was filed alongwith an application for condonation of delay. He has also drawn my attention to the affidavit sworn by his Counsel in support of the application.

5. Learned counsel for Respondent in reply vehemently contended that the applicant was required to explain delay of each and every day in filing restoration application. The applicant has not explained the delay beyond a mere statement that due to prolong illness of his mother, who need physio and other therapies at Agha Khan Hospital twice a week, he could not pursue his case. He has however, not given the date of physiotherapy or doctor's prescription for medical treatment. No medical certificate showing illness of his mother was filed. The Counsel for the applicant in his affidavit, too, had failed to give a plausible explanation that how and why he could not check the

proceedings of a case for almost two years. However, the explanation offered by the Counsel i.e. court clerk has left job in 1999 and therefore, he could not manage this case was frivolous. The Counsel was not supposed to rely on court clerk who remained absent for two years. There must have been some other cases of the same counsel which he had attended then why he has not attended this case.

6. I have carefully examined the record. The applicant's explanation for the delay in filing application for restoration of suit after almost two years was not found satisfactory by the two courts below. The revisional court cannot interfere in the concurrent findings of facts unless extra-ordinary circumstances exists to interfere. In the case in hand, the suit filed by the plaintiff in **1992** was for specific performance of contract dated **16.11.1989**. The relief of specific performance being discretionary even, if the Suit is restored to its position of 1992 when it was dismissed after 17 years, the court cannot grant discretionary relief in favour of the applicant. The applicant has not made any payment pursuant to agreement of **1989** except the advance money, if any. The agreement of sale dated 16.11.989 has died with the passage of time and the Court cannot be enforced by exercising discretion. Even otherwise, the applicant has failed to make out a good cause for condonation of delay. Precisely, no sufficient cause was shown by the applicant in his application for condonation in delay in filing the application for restoration of suit.

7. In view of the above this revision was dismissed by short order dated **25.8.2016** and these are the reasons for the same.

ARSHAD/

J U D G E