



application **U/O.IX Rule 13 CPC** r/w Section 12(2) CPC was maintained.

2. Briefly stated the facts of this case for the purpose of this Revision are that Respondents No. 1 to 4 filed suit No.692/2002 for declaration, cancellation of documents, possession and mandatory injunction against the applicants, which was decreed on **31.01.2004**. The respondents later on filed an Execution Application No.06 of 2004. The applicants after service of notice of execution application filed an application under **Order IX Rule 13 CPC r/w Section 12(2) CPC** on the ground that Respondents/ Plaintiffs have obtained judgment and decree from the Hon'ble Court by misleading, misguiding and by misrepresenting the actual facts, as the documents on the basis of which suit No.692/2002 was filed were bogus and fictitious, as such no reliance should have been placed upon the said documents by the trial Court. It was further averred by the applicant in said application that they have contested the suit and filed their written statement through their advocate **Mr. Abdul Khalil**, who disappeared from the case and had not pursued their case with the reason best known to him. On inquiry by the applicant, it was transpired from the Court record that the counsel had filed an application **U/O. IX rule 7 CPC**, which was found not maintainable at law. The respondents filed their counter affidavit and controverted all the facts.

3. Learned trial Court after hearing the counsel for the parties, by order dated **21.01.2006** dismissed application under Order IX Rule 13 CPC r/w Section 12(2) CPC on the ground that any cogent reason was not made out to grant/allow the application and further observed that the

executing Court cannot go behind the decree. The applicant impugned the order dated 21.2.2006 by filing Civil Misc. Appeal No.11 of 2006 which also met the same fate on the ground that the applicants were negligent and the Sections mentioned in the application were not applicable in the given facts of the case and the executing court has rightly dismissed the application, since the provisions of **Order IX Rule 13 CPC** are applicable in the cases in which a decree is passed ex parte against the Defendant and they may apply to the same court which has issued ex parte decree to set aside it. If he satisfies the Court that the summons were not duly served, or that he was prevented by any sufficient cause from appearing in court when the suit was called on for hearing, only then court having passed the ex parte orders can recall it, but such relief cannot be granted by executing court.

4. I have heard learned counsel for the applicants and Respondents No.1 to 4 and perused the record.

5. Perusal of record reveals that the applicants have challenged the validity of judgment, decree before the executing court on the ground that the judgment and decree was obtained by fraud & misrepresentation despite the fact that the applicants were served and they contested the case before the trial court. They have filed written statement and even issues were framed by the learned trial Court and respondents have lead evidence, therefore, it was not a case of fraud and misrepresentation by Respondents No.1 to 4 in absence of applicant before the trial Court in obtaining judgment & decree. It was purely result of none appearance and negligence of both the applicant and their counsel before the trial court. The negligence of applicants is that for a long

period of over six months they did not even tried to find out the fate of the proceedings of their case from their advocate. The counsel had not withdrawn his power and he has stopped pursuing the interest of his client in Court from the stage of the case when it was fixed for evidence of respondents/ plaintiffs. The respondents led their evidence and it has gone unrebutted.

5. It is a well-established principle of law, which has been consistently followed by the Superior Courts that the parties are bound by the acts and omissions of their counsel and that in case of any negligence on the part of their counsel, the parties cannot claim that they are not to be held responsible. The other equally settled principle of law which is also against the applicants is that when a matter is dismissed or/any adverse order is passed in the case, valuable rights are accrue in favour of the other side which cannot be taken away unless a justifiable, strong or sufficient cause is shown. The above view which is fully attracted in the given facts of the case in hand was expressed by superior Courts in the following authorities:-

- (i) *Zahid Ahmed Vs. Deputy Director Adjudication and 2 others (PLD 2006 Karachi 252)*, Relevant page 258.

“19. From the careful examination of the authorities, it is unanimous opinion of the Hon’ble Supreme Court of Pakistan that any negligence on the part of the advocate of the party is binding upon him and if he engages a counsel who is lacking sense of responsibility to the Court, it is he who should suffer and not the other side.....”

- (ii) *Muhammad Nawaz & 3 others V/S Mst. Sakina Bibi & 3 others (1974 SMCR 223)*, Relevant pages 223 & 224.

“3. Even if the above explanation is to be taken at its face value, it would not constitute a sufficient cause for the condonation of long

delay that has taken place in the instant case. The initial obligation was of the petitioners to enquire about the decision in their appeal, or to arrange with their counsel to inform them about the decision if it is announced in their absence. Even if it be assumed that their counsel neglected to inform them that per se would not be a sufficient ground for condonation of delay, when a valuable right has accrued to the respondents 1 to 3. We are not satisfied that the petitioners were diligent or took due care in the matter.”

(iii) *Khalid Saigal Vs. National Investment Trust Ltd and 2 others (1984 CLC 182)*, Relevant page 185.

“.....in our view this is case of gross negligence. In any case, it was initially appellant’s duty to find out the date of passing of the order and his negligence cannot be condoned for he has not acted with due care and attention and he therefor lacks good faith.”

In the case in hand, in first place it was not a case of exparte order. It was a case of no evidence in rebuttal, therefore, provision of **Order IX Rule 9 CPC** were not attracted after six months of judgment which was not an “exparte order”. The learned appellate court in the impugned judgment has reproduced the provision of **Section 12(2) CPC** and rightly held that no fraud or misrepresentation was possible in presence of contesting applicant.

6. In view of the above facts and circumstances, the trail courts had rightly dismissed the application under Order IX Rule 13 CPC r/w Section 12(2) CPC and the appellate court too, rightly dismissed Civil Misc. Appeal. Therefore, I am not inclined to interfere in the impugned judgments. Consequently, this Revision Application is dismissed with no orders as to costs.

**J U D G E**

Karachi,  
Dated: 22.11.2016.

*Ayaz Gul*