

by filing Civil Appeal No.28/2007, which was dismissed for non-prosecution by order dated **12.11.2008**. Thereafter on **06.04.2009** the applicants filed an application under Order XLI Rule 19 CPC r/w Section 151 CPC alongwith an application under Section 5 of Limitation Act for condonation of delay of about four months for setting aside the order dated 12.11.2008. The grounds taken in the application were that Applicant No.1 being an old age and sick lady and the applicant No.2, the son of applicant No.1 who has been pursuing the appeal met with an accident in June, 2008 and remained under treatment from 21.06.2008 to 23.03.2009, therefore, has failed to appear in Court. Learned trial Court dismissed both the application under Order XLI Rule 19 CPC r/w Section 151 CPC and application under Section 5 of Limitation Act by order dated **17.6.2009** on the ground that the applicant had failed to offer sufficient reason to grant/allow these applications and observed that it was the duty of applicants to inform the Court through their Advocate but they have failed to do so.

3. I have heard learned counsel for the applicants and perused the record.

4. Learned counsel for the applicant has made her submissions on 10.11.2016 and at her request she was allowed to file written arguments within a week. She has also placed written arguments on record in which she has relied on the following case laws:-

- i) (Anwar Khan Vs. Fazal Manan) **2010 SCMR 973**;
- ii) (Shoukat Javed Vs. Shamsher Ali Khan and others) **2015 YLR 2620**;

- iii) (Fareed Ahmed Janjua Vs. Punjab Small Industries Corporation and others) **2012 SCMR 123**;
- iv) (Shoukat Hussain and others Vs. Mst. Qaisarah Begum and others) **1988 SCMR 263**;
- v) (Messrs United Bank Limited through Attorneys and 2 others Vs. Messrs Plastic Pack (Pvt.) Limited and 4 others) **2012 CLC 229**.

5. I have examined the case law and the only excuse advanced by the applicant for not attending the Court was that he had met with an accident. The counsel, who was representing the applicant, has not offered any explanation of his absence on the particular date. The personal appearance of the applicant was not required in appeal and the counsel should have attended the Court, who without any justification has not attended the Court and therefore, his absence from the Court has gone unexplained. The case law relied upon by the learned counsel mentioned above are quite distinguishable. In 2010 SCMR 973, it was a case of wrong noting of a date by the counsel and the counsel has sworn an affidavit in this respect. Likewise in each case, the counsel of the appellants have been offering explanations of their absence through an affidavit. In the case in hand, the counsel has never offered any explanation of his absence and the applicant, too, has not even mentioned any reason for absence of his counsel.

6. A valuable right has already accrued to the respondents. It is also a well settled principle of law that the parties suffers by the acts and omissions of their counsel and that in case of negligence on the part of their counsel, the parties cannot claim that they will not be held responsible. May be for this reason the applicant has not referred to the negligence of his counsel in his application under Order XLI Rule 19 CPC.

7. The record shows that since 1999, when the respondent filed the suit, the applicant has been playing delaying tactics. After filing written statement he never appeared in the witness box and attempted all efforts to delay the proceedings by making frivolous applications. However, after 18 years on the basis of evidence from respondents' side the suit was decreed. The applicants never requested the trial Court to reopen their side for evidence. They have not adduced any evidence. However, they preferred an appeal but did not pursue it, as on the day of its dismissal even their counsel was not in Court. Though, all this is not relevant for determination of the ground for restoration of appeal but it does reflect on the overall conduct of the applicant.

8. The applicant has met with an accident and he was under treatment of Dr. Akhtar for 9 months from June 2008 to March 2009. He was not hospitalized and his counsel had to pursue the case. His counsel has not offered any explanation for not attending the Court on 12.11.2008. It is well settled law that once statutory rights are accrued in favour of the such right cannot be lightly disturbed in the name of doing substantiate justice. It was not the case of simple absence of the applicant from the Court on the date of hearing of appeal but it was, in fact, the case of absence of the counsel from the Court on the date of hearing which matters.

9. 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. Another settled principle of law is that when a matter is dismissed or any adverse order is passed, valuable rights accrue in favour of the other side cannot be taken away unless a justifiable, strong or sufficient cause is shown.

10. In view of the above facts and circumstances, the appellate Court has rightly dismissed the application under Order XLI Rule 19 CPC r/w Section 151 CPC, therefore, I am not inclined to interfere in the impugned order. Consequently, this Revision Application is dismissed with no orders as to costs.

J U D G E

Karachi,
Dated: 23.11.2016.

Ayaz Gul