

ORDER SHEET  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD

R.A No. 69 of 2015

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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1. For Katcha Peshi.
2. For hearing of CMA 353/2015

16.11.2016.

Mr. Faisal Nadeem Abro, Advocate for applicant.  
Mr. Imran Qureshi, Advocate for respondents No.20 & 21.

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This Revision Application is filed against the order dated 20.03.2015 under which the application filed by the present applicant under Order 41 Rule 19 of C.P.C. for recalling order dated 30.10.2013, whereby the Civil Appeal No. 125/2013 was dismissed by the learned Appellate Court for non-depositing the cost and non-appearance of the then Counsel of the appellant, who is now the applicant before this Court.

It is contended by the learned Counsel for the applicant that in his application for restoration which is available at Page 89, the applicant has specifically stated that since his wife was suffering from Hepatitis, hence he could not attend the Court proceedings. According to him, the restoration application was filed on 30.11.2013 and if there was a delay, it was only of one day. He further points out that Objection to the said application for restoration of appeal to its original position, was filed by the private respondents on 04.11.2014, that is, almost after one year.

In the impugned order, it appears that the factors that weighed with the learned Appellate Court were the indolent attitude of present applicant and secondly that he has not filed the application under Section 5 of the Limitation Act for condonation of delay.

Today, none is present on behalf of private respondents and Mr. Imran Qureshi, who represents official respondents No.20 & 21 has stated that legal principle on the issue at hand is quite clear that matter has to be decided on merits, rather than on technicalities.

This Revision Application is pending since 30.03.2015 and record shows that respondent No.17-Muhammad Iqbal, who also preferred the above referred Objections in the appeal, has refused to take Court notice, as per the Bailiff's report. This attitude on the part of private respondents also does not speak well of them. It is a settled principle of law that matter should be adjudicated on merits rather than technicalities, however, it does not mean that appellant or plaintiff after filing the appeal or the suit should start acting negligently.

Considering the entire set of facts of the present case, in my considered view, the attitude of present applicant was not so casual or indolent that the delay of one day could not have been condoned by the learned Appellate Court. After inclusion of Article 10-A in the Constitution of Islamic Republic of Pakistan, 1973, in my humble view, Courts have to be more careful while dismissing the cases in default or for non-prosecution.

Consequently, I allow this Revision Application and set aside the impugned order dated 20.03.2015. The effect of this order is that Civil Appeal No. 125/2013 is restored to its original position and the same will be decided afresh by the learned Appellate Court, however, all parties are put on notice that they will proceed with the civil appeal with due diligence and without seeking unnecessary adjournments with an object to delay the matter. The learned Appellate Court it is expected will decide the civil appeal within 4 weeks from the date of receipt of this order by it. Listed application(s) also stand disposed of in view of the above.

JUDGE