

IN THE HIGH COURT OF SINDH AT KARACHI

C P D 249 of 2019

Present: **Mohammad Ali Mazhar** and **Agha Faisal, JJ.**

New Coffee Club

vs.

Pakistan National Shipping Corporation & Others

For the Petitioner: Mr. Nadir Khan Burdi, Advocate

Date of Hearing: 26.03.2019

Date of Announcement: 26.03.2019

JUDGMENT

Agha Faisal, J: The present constitution petition was filed assailing the order dated 03.10.2018 (“**Impugned Order**”) delivered by the Court of learned XIIth Additional District Judge, Karachi South in Civil Revision Application 55 of 2018 (“**Revision**”). It may be pertinent to reproduce the operative part of the Impugned Order herein below:

“...record reveals that after closing evidence of the respondent/plaintiff on 03.11.2015 the matter was posted for evidence of Applicant/Defendant and since then the Applicant/Defendant did not appear for his evidence. On 15.04.2016 due to non-appearance of applicant/Defendant matter was adjourned as last and final chance despite this the Applicant/Defendant failed to appear for his evidence on number of date without any reason though he was required to be present in court for evidence. Finally learned trial court closed the side of evidence of Applicant/Defendant vide order dated 04.08.2016 on account of his non-appearance. The applicant/Defendant filed application for recalling order dated 04.08.2016 containing no any reason of his non-appearance. It is also pertinent to see here that the application for recalling order dated 04.08.2016 was filed on 13.3.2017 after lapse of seven months which indicate that the Applicant/Defendant has no interest in proceeding the matter.

10. I find no illegality or material irregularity in the impugned order on merits, hence the instant revision application is hereby dismissed with no order as to cost.”

2. Learned counsel for the petitioner submitted that the dates of hearing whereat no proceedings took place could not all be attributed to the petitioner. It was further added that closing the side of the petitioner would prejudice the proper adjudication of the suit. It was lastly contended that the Impugned Order failed to properly appreciate the contentions advanced by the petitioner, hence, was not sustainable in law.

3. We have given careful consideration to the determinants arrayed in the Impugned Order. It is recorded that the present petitioner repeatedly failed to appear and record his evidence. It is an admitted fact that a last and final chance was given to the petitioner to record his evidence and even on the said date the petitioner failed to appear in Court. The learned counsel for the petitioner was unable to provide any cogent justification for such non-appearance. The Impugned Order records that the application for recall was filed after a lapse of seven months, which fact was admitted by the learned counsel for the petitioner and he was unable to justify such a patent delay. We have also perused the application dated 18.03.2019 filed before the learned Trial Court for recall of the order dated 04.08.2016 and it is observed that it is a handwritten application which was filed without any accompanying affidavit. It may be pertinent to reproduce the contents of the said application to demonstrate that no cogent grounds were apparent therefrom:

“It is prayed on behalf of the defendant that this Honorable Court may be pleased to recall the order dated 04.08.2016 as the matter was fixed for recording the evidence of defendant but due to some reason the then advocate for defendant could not proceed with the matter.

That for the sake of justice the evidence of defendant is very much necessary.

The undersigned filed his power recently on 10.02.2017, therefore, in the interest of justice opportunity for evidence may kindly be given to the defendants.”

4. The learned Trial Court exercised discretion duly vested therein and closed the petitioner's side after coming to the reasoned conclusion that the petitioner had failed to avail the numerous opportunities extended thereto in such regard. Recall was sought before the learned Trial Court after a lapse of seven months vide an application devoid of an accompanying affidavit and / or any cogent grounds whatsoever. The issue came before the learned Revisionary Court and an exhaustive order was passed upholding the conclusion arrived at by the learned Trial Court. The ambit of the learned Revisionary Court is circumscribed to the prescription of Section 115 CPC and a bare perusal of the Impugned Order demonstrates that the same has been rendered within the four corners of the provision enabling such jurisdiction. It has been held in the case of *Asif Rafique vs. Mst. Quratullain & Others*, reported as *2016 MLD 425*, that the exercise of constitutional jurisdiction in such matters was only warranted in rare circumstances if the findings recorded by the Courts below are arbitrary and suffering from the vice of misreading or non-reading of evidence. In this matter, it is the considered view of this Court that the findings of the learned Revisionary Court suffer from no such infirmity and that the petitioner has failed to plead any rare circumstance, which would attract the jurisdiction of this Court.

5. In view of the reasoning and rational contained hereinabove we observe that no case has been made out by the petitioner and that no

interference is merited in the Impugned Order, which is hereby maintained and upheld. The petition, alongwith listed applications, was dismissed in limine vide our short order dated 26.03.2019 and these are the reasons for the said short order.

J U D G E

J U D G E

Karachi.

Dated 26th March, 2019.

*Farooq PS/**