

IN THE HIGH COURT OF SINDH, KARACHI

C.P No. S-794 of 2010

Ghulam Mohiuddin Warsi son of Haji Ghiasuddin Warsi.....Petitioner.

V e r s u s

Qutibuddin son of Hatim Bhai and others.....Respondents.

ORDER

Date of hearing	:	29 TH March, 2018.
Date of Judgment	:	20 TH April, 2018.
Petitioner	:	Mr. M. Sadiq Hidayatullah, advocate.
Respondent No.1	:	Mr. Badrudduja Khan, advocate.

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Mrs. Kausar Sultana Hussain, J:- By this order I intend to dispose of an application dated 02.11.2016 (C.M.A. No. 8098 of 2016), under section 151 CPC for restoration of petition at its original status, which was dismissed vide order dated 17.10.2016 for non-prosecution.

The learned counsel for the petitioner argued that on 10.10.2016 the present petition was fixed at Serial No. 5 in additional list, while his other matters were also fixed before other benches, when he came to this Court to proceed with this matter at about 9.50 am, his petition was already dismissed for non-prosecution. It is pertinent to mention here that the present petition was actually dismissed for non-prosecution on 17.10.2016, while the learned counsel for the petitioner under wrong impression mentioned its dismissal date as 10.10.2016. According to the learned counsel for the petitioner his absence on the day of dismissal was neither intentional nor deliberate. He prayed that petition may be restored to its original stage, so that it be decided on merits.

The learned counsel for the petitioner has annexed his own affidavit alongwith the present application for restoration of the petition, whereby he has narrated the reasons of his absence on 29.9.2016 when on call of this case, he could not appear before this Court and the matter was dismissed for non-prosecution and in default. It is again pertinent to mention here that petition was dismissed on 17-10-2016.

The learned counsel for respondent No. 1 has argued that the petitioner and his counsel never taken this matter seriously as in spite of repeated directions of this Court they did not make compliance by producing special power of attorney in the office of this court, due to which this petition was dismissed for non-prosecution and in default. He further argued that the power of attorney produced by the petitioner before this Court does not authorize his attorney to submit present application for restoration of the petition as it has not been mentioned specifically in said power of attorney. The learned counsel for respondent No. 1 has relied upon the following case laws in this regard :-

1993 C.L.C. 66 (Azad Jammu and Kashmir)

It has been held in the above mentioned case law that :

"Unless and until specific powers have been given through attorney, no proceedings can be initiated by such attorney. The power of attorney is always to be construed strictly and an attorney can exercise only those powers which have been incorporated in the power of attorney or which have been conferred upon the attorney."

The learned counsel for respondent No. 1 has also relied upon the judgment reported in 1974 SCMR 162 (before Hon'ble Mr. Justice Hamoodur Rahman, C.J. and Hon'ble Mr. Justice Muhammad Gul). It has been held in the said judgment that:-

"The mere fact that a litigant has engaged a counsel to appear on his behalf does not absolve him of all responsibility. It was as much his duty as that of the learned counsel engaged by him to see that the appeal was properly and diligently prosecuted. If he engaged a counsel who was lacking in his sense of responsibility to the Court, it is he who should suffer and not the other side."

The learned counsel for respondent No. 1 has further relied upon PLD 1989 (Peshawar) 185, PLD 1992 Lahore 156, PLD 1966 (W.P) Lahore 567 and prayed for dismissal of present application.

I have gone through the record of this petition and found that on 17.8.2010 after hearing arguments of the learned counsel for the petitioner this court has granted status quo in favour of the petitioner on the ground that ejectment case was filed against a dead person, namely, Ghayasuddin, who was predecessor-in-interest of the present petitioner and that ex-parte order of ejectment dated 03.05.2000 was obtained from the learned Rent Controller, however, after acquiring knowledge through the notice of execution bearing No. 39 of 2000 present petitioner filed application to recall the ex-parte order passed against his deceased father. The said ex-parte order was not recalled vide order dated 02.12.2004. Subsequently, against said order, FRA No. 187 of 2004 was filed on 17.12.2004 by the same petitioner, which was also dismissed for non-prosecution vide order dated 24.01.2009. The restoration application was also dismissed vide order dated 22.05.2010. Thereafter, present petition was filed. On 19.05.2015, upon examining the case file of present petition, while it was reserved for order, it transpired to this court, that petition was instituted by the petitioner through his attorney namely Hamid Ahmed Baig son of Nisar Ali Baig without attaching any power of attorney for filing the instant

petition. In order to ascertain authorization of the attorney to file present petition against the impugned order dated 22.05.2010, the learned counsel for the petitioner was instructed to file copy of the same in the office after showing original power of attorney to the office and advance copy of the said power of attorney also be provided to the counsel for the respondents. Order sheet dated 19.09.2016 shows that petitioner has not produced original power of attorney before the office for comparison and verification of photo copy of power of attorney available on the record. Record further shows that after 19.05.2015, the learned counsel for the petitioner remained absent on the next two dates and then on further two dates request for adjournment was also made on his behalf. On 19.09.2016, the learned counsel for the petitioner again requested for adjournment, which was granted by this Court as last and final opportunity to the petitioner to comply with the order dated 19.05.2015 regarding production of original power of attorney within a week without fail. On 26.09.2016 the learned counsel for the petitioner has informed this court that the petitioner has complied with the orders of this court by producing the original power of attorney in the office for comparison and verification. Since the office has not made any endorsement on photo copy of power of attorney regarding comparison or verification, therefore the learned counsel for the petitioner undertook to file the original power of attorney alongwith statement within seven days with advance copy to the learned counsel for respondent No. 1. On 10.10.2016, upon failure to produce original power of attorney despite repeated directions, status quo granted on 17.08.2010 was vacated, however, seven (7) more days to produce the same were granted with specific directions that in case of failure to comply

the order, petition would be deemed to have been dismissed for non-prosecution. While perusing the order sheet dated 17.10.2016, it transpired that petitioner's counsel and petitioner were not present and due to continuous absence of the petitioner this petition was dismissed for non-prosecution as well as non-compliance of the orders of the Court alongwith listed applications.

On 02.11.2016, the learned counsel for the petitioner has submitted an application for the restoration of this petition (CMA No. 8098 of 2016) without mentioning the date of its dismissal. The learned counsel for the petitioner had filed his own affidavit alongwith this application, wherein he has taken plea for restoration of the petition on the ground that the power of attorney had already been filed alongwith petition, which was shown to the Registrar, who was satisfied and fixed the matter in court. Per learned counsel for the petitioner in compliance of direction of this court, original power of attorney has been filed. He further contended in his affidavit that on 29.9.2016, he was busy before the Hon'ble Supreme Court of Pakistan but power of attorney has been placed on record, therefore, on 10.10.2016 this matter was fixed in additional list at Serial No. 5. However, other matters were also fixed at Serial Nos. 10 and 16 before another bench, therefore, when he reached before this court for appearance, he came to know that the present petition already dismissed at 9.50 am for non-prosecution and in default.

It is noticed by this court that the learned counsel for the petitioner has not mentioned the correct date of dismissal of present petition. Record shows that on 10.10.2016 when status quo order (granted on 17.08.2010) was vacated and seven

more days were granted for producing original power of attorney, the learned counsel for the petitioner was present before this Court but he did not inform the court that he placed power of attorney on record.

A perusal of entire record shows that the present petition was filed by the petitioner Ghulam Mohiuddin Warsi through his attorney but no specific power has been incorporated in the said power of attorney, which could empower him to file petition or prefer restoration application for the matter of dismissal of petition for non-prosecution or in default. I am of the firm opinion that the petition and the restoration application of the said petition seriously lack reasonable grounds logical premise and endorsement of law. I accordingly dismiss the restoration application of the petitioner for reasons recorded earlier. Petition of the petitioner has already been dismissed for non-prosecution and in default.

J U D G E

Faheem/PA

this petition was filed by the petitioner against order passed by the learned VIth Additional District Judge South, Karachi who confirmed the order passed by VIIth Senior Civil Judge and Rent Controller South, Karachi. The point involved in this case was that ejectment proceedings were initiated by respondent No. 1 against the dead person. The notice as per record seems to have been served on a dead persons which is not at all possible. Since ex-parte order was passed against a dead person the respondent filed an Execution Application, notice of which had been received by the son of the petitioner, who appeared through his attorney before the learned trial Court and intimated about the death of his father before institution of ejectment proceedings. The learned trial Court ordered to the petitioner to submit death certificate, which was produced. The learned trial Court passed on illegal order against a dead person, which cannot be executed. Against the said order appeal was preferred but the same was dismissed without touching the ground of death of the father of the petitioner, who was the tenant and against the said order, this petition was filed before this Court and this Court has suspended the order passed by the Lower Court and matter proceeded. Ultimately the same was argued before this Court and it was reserved for orders. Before passing the orders on main petition this Court the petitioner was directed to file the Power of Attorney and returned the file to the office and finally the matter was fixed on 29.9.2016, on which date he was busy before the Hon'ble Supreme Court of Pakistan and an intimation was given to this Court although original power of Attorney was placed on record. The matte was adjourned to 10.10.2016 and on that day this matter was fixed in Additional List at Sr. No. 5, he had about 27 cases for hearing (priority) and at Sr. No. 37

Mr. Justice Muhammad Shafi, which was taken after tea break. That he had finally come to proceed with the matter as his books were also lying in the Court room, when he reached this Court at about 9.50 am, he was informed that this petition was dismissed, due to his non-appearance at the time, when the matter was taken up, his absence therefore neither intentional nor deliberate but was to the facts mentioned above. He prayed that this application for restoration may be allowed to proceed and be decided on merits.

Per learned counsel for the petitioner on the day he was busy before the Hon'ble Supreme Court of Pakistan and intimation was given to this Court and again Power of Attorney was also placed on record.