

IN THE HIGH COURT OF SINDH AT KARACHI

**Civil Revision Application No.116 of 2012**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Applicant : Mst. Qaiser Begum through  
Mr. Nazar Iqbal, advocate.

**Versus**

Respondent No.1 : Vth Addl. District Judge, (East) Karachi

Respondent No.2 : House Building Finance Corporation,

Respondent No.3 : Mst. Iffat Shakoor,

Respondent No.4 : Mst. Rashida Shakoor

Date of hearing : **26.02.2020**

Decided on : **26.02.2020**

**JUDGEMENT**

**NAZAR AKBAR, J.** This Revision Application is directed against the orders dated **17.02.2012** whereby Vth Additional District Judge first dismissed an application U/s.12(2) CPC for setting aside order dated 25.07.1998 decreeing claim of HBFC against the applicant and then by order dated 12.08.2010 dismissing an application under Order 9 Rule 9 CPC for restoration of order of dismissal of application under Section 12(2) CPC for non-prosecution.

2. Briefly stated the facts of the case are that Respondent No.2 provided finance facilities to Respondent No.3 for construction/purchase of house No.94, in Sector 51-B, Korangi Township, Karachi admeasuring 241-4 sq.yds under the terms of lease, Conveyance Deed and Registered Deed of Assignment and Partnership bearing No.5825 executed by and between Respondents

No.2 & 3 on **07.07.1980**. On failure to repay the loan by Respondent No.3 Respondent No.2 filed J.M. Application **No.221/1994** for attachment of the said property. The matter was decided exparte as Respondent No.3 were served through publication and the claim of Respondent No.2 was decreed by order dated **25.7.1998**. Then Respondent No.2 filed execution application. The applicant suddenly on 25.05.2006 through an employee of Respondent No.2 came to know about Execution No.8/1998 and therefore, the applicant filed an application under **Section 12(2) CPC** and also filed application under Order **39 Rule 1 & 2 CPC**. Learned IVth ADJ East, by order dated **22.7.2006** directed the parties to maintain status quo till the next date of hearing. Counsel for the applicant after obtaining status quo failed to appear before the trial Court and the trial Court by order dated **12.08.2010** dismissed the application under **Section 12(2) CPC** in the following terms:-

“Matter called thrice since morning, learned counsel for the respondent called absent, petitioner and his advocate called absent. No intimation or application whatsoever has been received as yet, it is now 01:20 p.m. shows that petitioner and its counsel have lost their interest and does not want to further proceed the matter, therefore, the instant Judicial Misc. Application stands dismissed in non-prosecution”.

3. The Applicant to recall the above orders filed an application under **Order 9 Rule 9 CPC** r/w **Section 151 CPC**, for restoration of her application under Section 12(2) CPC which was also dismissed by order dated **17.02.2012**, in the following terms:-

“Matter called thrice since morning, learned counsel for the appellant is present, none present on behalf of the applicant/objector. On pursuant of the record it appears that today matter is fixed for hearing of application under Order 9 Rule 9 CPC r/w Section 151 CPC for restoration of J.M.A. No.221/1994 filed by the

applicant/objector, but the learned counsel for the applicant/objector called absent, therefore, in the larger interest of justice matter was kept aside at 10:30 a.m., but learned counsel for the applicant/objector called absent, no intimation or application whatsoever has been received as yet, it is now 01:30 p.m. shows that applicant/objector and his counsel have lost their interest and does not want to further proceed the matter, therefore, in the circumstances, application under Order 9 Rule 9 CPC r/w Section 151 CPC stands dismissed in default of non-prosecution”.

4. The applicant has filed the instant revision application challenging both the orders.

5. I have heard the learned counsel for the applicant and perused the record.

6. Learned counsel for the applicant was under heavy obligation to satisfy the Court by showing cogent and plausible explanation that on all the occasions when adverse orders were passed by the Courts below on account of absence of the learned counsel for the applicant as well as applicant. Learned counsel in the memo of revision has not given even a single line explanation in the grounds of the revision application which prevented the applicant and her counsel from attending the Courts on several dates during pendency of application under **Section 12(2) CPC** on **12.8.2010**. Then after dismissal of their application, the applicant and her counsel remained absent from the Court during the hearing of her application under **Order 9 Rule 9 CPC** without any explanation. Neither any explanation was offered before trial Court nor any explanation even offered before this Court in revision application, which is pending for the last eight years. The record shows even this revision has been dismissed several times for non-prosecution. It was dismissed for non-prosecution on **23.10.2012** and restored on **16.9.2013**. However, on

**06.10.2015** it was again dismissed for non-prosecution and conditionally restored on **01.06.2018** subject to cost of **Rs.10000/-** with the observation if cost is not paid this revision will be listed only for non-prosecution and against it took almost a year to deposit the cost to make it worth hearing and not to be treated as dismissed for non-prosecution. However, again counsel remained absent but ultimately on **26.02.2020**, I heard him and decided and dismissed this revision application for the reasons to be recorded later on.

6. The above are reasons for the short order dated **26.02.2020**.

Karachi  
Dated: 13.02.2020

*SM*

**JUDGE**