

IN THE HIGH COURT OF SINDH AT KARACHI

Suit 680 of 2002 : Muhammad Hanif
(Through legal heirs) vs.
Haroon Vivani & Others

For the Plaintiff/s : Chaudhry Muhammad Iqbal, Advocate

For the Defendants : Mr. Ishtiaq Memon, Advocate
Ms. Rakhshanda Waheed, Advocate
State Counsel

Date of hearing : 24.08.2020

Date of announcement : 24.08.2020

ORDER

Agha Faisal, J. This suit was instituted on 30.05.2002, however, no substantial progress has been occasioned herein since 2006. Pursuant to successive orders¹, counsel for plaintiffs filed amended title², however, the matter is being listed repeatedly *inter alia* for taking of evidence, and the plaintiffs (stated to have residence in Karachi per the amended title) remain absent without intimation and / or justification.

2. On 07.08.2020 notice³ was directed to be issued to the plaintiffs and their legal counsel for a fixed date⁴ of hearing⁵, being 17.08.2020. On the aforesaid date the plaintiffs' counsel appeared and submitted that he had no instructions to proceed with the suit. While the learned counsel for the defendants sought immediate dismissal of the suit, this Court was pleased to grant the request of the plaintiffs' counsel, for a final opportunity to obtain instructions from the plaintiffs, and the matter was fixed for today.

3. The matter was taken up for hearing today, being the fixed date granted earlier, and the plaintiffs' counsel yet again pleaded no instructions. Notwithstanding the fact that the learned counsel had obtained instructions from a plaintiff earlier, as demonstrated by the order dated 20.11.2018; acted upon instructions of the impleaded legal heirs, as demonstrated from the filing of the amended title ostensibly on 08.01.2019; appeared before the Court upon notice to plaintiffs' counsel on 17.08.2020 and sought time to obtain instructions; a statement was submitted by the learned counsel today to state that he had no authority to proceed herewith, with effect from the date of demise of the predecessor in interests of the plaintiffs.

4. It is settled law that inability and / or unwillingness to proceed with a suit at a hearing may entail dismissal thereof for non-prosecution. The

¹ Orders dated 17.05.2018, 18.09.2018 & 20.11.2018.

² Notation on amended title stipulates that it was presented on 08.01.2019.

³ *Allied Group Ventures Limited vs. Quality Vision (Private) Limited* reported as *PLD 2002 Lahore 274*.

⁴ *Per Nasim Hasan Shah J. in Nowsheri Khan vs. Said Ahmed Shah* reported as *1983 SCMR 1092*.

⁵ *Per Muhammad Ali Mazhar J. in Muhammad Naeem vs. KA Bashir* reported as *2010 CLC 1039*; *Govt. of Sindh vs. Muslim Educational Society* reported as *1991 CLC 1766*; Order XIV Rule 1(5) Code of Civil Procedure 1908

term *hearing* has been dilated upon time and time again by the Superior Courts and it is defined as a date fixed *inter alia* for determinant proceedings of the case. The law recognizes dismissal of a suit for non-prosecution at the stage of framing of issues⁶ and also at the stage of taking of evidence⁷, which is the stage of the present proceedings. In view of the amendment of Order XX Rule 1, pursuant to Civil Laws Reforms Act 1994, dismissal on account of non-prosecution is also envisaged post conclusion of evidence at the stage of final arguments⁸.

5. This matter, instituted in 2002, has remained pending for taking of evidence for the last fourteen years. Notwithstanding numerous opportunities having been provided to the plaintiffs / legal counsel to proceed with the matter, including issuance of notice directly thereto per orders dated 07.08.2020, they have failed to do so. In view hereof, this Court is constrained to hereby dismiss this suit for non-prosecution⁹.

J U D G E

⁶ Per Wahiduddin Ahmed J. in *Khan Bahadur H M Habibullah vs. Sheikh Mahboob Alam* reported as *PLD 1959 Karachi 143*; *Manager Jammu & Kashmir State Property in Pakistan vs. Khuda Yar* reported as *PLD 1975 Supreme Court 678*; *Ciba Geigy (Pakistan) Limited vs. Muhammad Safdar* reported as *1995 CLC 461*.

⁷ *Sher Muhammad vs. Ahmad Khan* reported as *2004 CLC 1016*; *Abid Mahmood vs. Abdul Aziz* reported as *2003 YLR 3196*; *Kh. Ghulam Qadir vs. Muhammad Sharif* reported as *2000 MLD 2047*; *Qaim Ali Khan vs. Muhammad Siddique* reported as *1987 SCMR 733*; *Manager Jammu & Kashmir State Property in Pakistan vs. Khuda Yar* reported as *PLD 1975 Supreme Court 678*.

⁸ Per Muhammad Ali Mazhar J. in *Al Waqar Corporation vs. Rice Export Corporation* reported as *2011 MLD 266*; *Yawar Hussain vs. Ansar Ali Khan* reported as *2010 CLC 46*; *Sher Muhammad vs. Ahmad Khan* reported as *2004 CLC 1016*; *Abid Mahmood vs. Abdul Aziz* reported as *2003 YLR 3196*; *Qaim Ali Khan vs. Muhammad Siddique* reported as *1987 SCMR 733*; *Manager Jammu & Kashmir State Property in Pakistan vs. Khuda Yar* reported as *PLD 1975 Supreme Court 678*.

⁹ Order IX Rules 3 & 8 read with Order XVII Rule 2 of the Code of Civil Procedure 1908; *Muhammad Naeem vs. KA Bashir* reported as *2010 CLC 1039*; *Ciba Geigy (Pakistan) Limited vs. Muhammad Safdar* reported as *1995 CLC 461*; *Haji Muhammad Sharif vs. Settlement & Rehabilitation Commissioner* reported as *1975 SCMR 86*; *Zulfiqar Ali vs. Lal Din* reported as *1974 SCMR 162*.