

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application Nos. 157 to 165 of 2013
(Director Intelligence & Investigation v Adeel Traders)

Date	Order with signature of Judge
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Disposed of case.

For order on CMA No. 2906/18 (Restoration)

5.11.2020.

M/s. Dr. Shah Nawaz Memon and Ghulam Murtaza, Advocates for Applicants.

This application has been filed under Section 151 CPC for recalling of Order dated 14.09.2018, whereby, this Reference Application was dismissed for non-prosecution. Similar applications have also been filed in all connected matters. On 14.09.2018, the following order was passed:-

“Mr. Kailash holding brief for Mr. Zain Jatoi, learned counsel for the applicant(s), who is reportedly out of station, however, under instructions submits that he has already returned the brief(s) to the applicant department.

Record shows that instant matters were being represented by some other counsel on behalf of the applicant department, whereafter, Mr.Zain Jatoi, superseded the earlier counsel, however, has not proceeded with the matters after having filed his vakalatnama. Instant Reference Applications filed on behalf of the applicant department are pending since 08.06.2013, however, counsel representing the applicant department did not proceed with the matter during all these years, whereas, on 08.09.2016 and 09.12.2016 orders were passed by this Court requiring the counsel for the applicant department to proceed with the matter. Today, instead of proceeding with the matters brief has been held on behalf of Mr. Zain Jatoi, who submits that the brief(s) has been returned to the applicant department.

In view of hereinabove facts and circumstances, it appears that the applicant department has lost interest to proceed with the matters, which are pending since 2013 without any useful progress even Notice have not been issued in the instant Reference Applications. Accordingly, this Court is left with no option but to dismiss these Reference Applications along with listed applications on account of non-prosecution.”

Dr. Shahnawaz, learned Counsel for the Applicant(s) in some of the listed matters submit that in view of the application and supporting affidavit, these Reference Applications be restored as the dismissal was on account of negligence, if any, of the earlier Counsel, who never informed the applicant regarding return of his brief. According to him

government revenue is involved therefore this application merits consideration.

We have heard the learned Counsel. Perusal of the record reflects that since filing of these Reference Applications, nobody had turned up to proceed with these matters and the Counsel, then engaged, on 03.12.2015 sought permission to file appropriate application for withdrawal of his name / Vakalatnama from these cases. On 08.09.2016, the said Counsel was in attendance and submitted before the Court that he has returned the brief and has intimated the same to the applicant / department. The Court noted that despite lapse of time no alternate arrangement was made, and therefore was compelled to pass the following order on 08.09.2016:-

“Learned counsel for the applicant submits that he has already returned the brief and intimated the matter to the applicant/department, however, it appears that no alternate arrangement has been made so far. Such factual assertion was also noted by this Court on 03.12.2015. Instant reference applications are pending since 2013 at Katcha Peshi stage without any useful progress. Neither the applicant nor their counsel is proceeding with the matter. We have observed in number of cases pertaining to Revenue Authorities including Income Tax, Sales Tax and Customs Department, that such cases are not being pursued with due diligence either by the applicants or their counsel, who either remain absent or do not come prepared, whereas, delay is caused in disposal of such cases which causes serious inconvenience as well as wastage of Court’s time. Since the applicant in the instant cases i.e. Directorate General of Intelligence and Investigation, F.B.R. has not remained vigilant to pursue instant reference applications inspite of the fact that the learned counsel for the applicant has returned the brief, whereas, no alternate arrange has been made, this Court is left with no option but to dismiss instant reference applications for non-prosecution along with listed applications, which stands dismissed accordingly.”

By virtue of the above order, these Reference Applications were dismissed for non-prosecution. The above order clearly reflects that the Applicant as well as other departments of the FBR have not remained vigilant to pursue their cases, wherein, Counsel engaged by them have returned brief(s).

It appears that subsequently, restoration application bearing CMA No. 3546/2016 was filed on behalf of the Applicant through a *new /2nd Counsel* on the ground that their earlier Counsel had not informed them about return of brief and this Court on 09.12.2016, considering the facts so pleaded, had restored these Reference Applications. Thereafter, the same conduct was repeated by the Applicant and their Counsel, and the Court was compelled to pass Order on 14.09.2018, whereby, the Reference Applications were dismissed, and now through these applications, restoration of the same has been sought yet again.

Admittedly once, this Court has, as an indulgence earlier restored the matter(s); however, the Applicant remained indolent and never pursued the matter(s) vigilantly. As to the argument that no information was passed on by their earlier Counsel(s) regarding return of brief, we may observe that this is between the Applicant and their Counsel, whereas, even this ground was once entertained; however, unfortunately, the Applicant has taken liberty to repeat the same conduct, and now through a new / 3rd Counsel, has urged the same ground and reason for restoration which we cannot accede to. Such conduct of the Applicant does not warrant interference nor require any indulgence or exercise of discretion in such matters, dismissed for non-prosecution. Law assists the vigilant even in causes most valid and justiciable. Similarly, fixation of cases before Benches entails public expense and time, that must not be incurred more than once in the absence of a reason most genuine and compelling¹. Accordingly, all restoration applications are meritless and are hereby dismissed. Office to place copy of this order in all listed matters.

Before parting we may observe that this Bench has been constituted by the Hon'ble Chief Justice to decide tax matters wherein stay / restraining orders are operating beyond a period of six months. This is an effort on the part of the Court to decide all such matters expeditiously. However, in this case as well as in a number of other cases generally, regrettably, we have noticed that the applicant / department as well as other departments of the FBR are neither vigilant in pursuing their matters nor any Departmental Representative ("DR") is in attendance before the Court on a permanent basis. We remember in earlier times a DR used to attend the Court on daily basis, not only to assist their Advocates but also to take note of cases of FBR in Courts and to apprise respective departments regarding progress. These days' no one turns up as a DR from any of the departments of FBR. It has also been noticed that the department (specially in matters pertaining to Inland Revenue Department), in identical facts and legal issues engages more than one Counsel and due to absence of any one of them, the matters are continuously adjourned, whereas, no timely comments are filed; nor the Counsel are ready to proceed when so directed. In fact, in a number of cases pertaining to Customs Department, the Collector of Customs (Preventive), & (Port Qasim) despite being served, have invariably chosen not to appear and

¹ Order dated 27.10.2020 by the Hon'ble Supreme Court in SECP V Nadeem H. Shaikh Criminal Appeal No.518 of 2010

defend the matters. This is a very sad state of affairs insofar as assistance from FBR's departments is concerned. We believe there are independent legal wings and departments within FBR headed by a Member (Legal), and despite this, the conduct before the Court is pathetic. We may also recall that earlier in identical situation, one of us (**Muhammad Junaid Ghaffar, J**) in Suit No.207/2017 vide order dated 23.11.2018 had recorded the following observations;

This is pathetic state of affairs insofar as FBR and Federation of Pakistan is concerned. Time and again it has been noted that the notices duly served upon Inland Revenue Department including LTU are not being responded in a number of cases. Such conduct on the part of these officials not only delays the matters, but also disturbs the entire Roster and proceedings of the Court as time and again notices are repeated upon them and cases are being adjourned on this ground. In this case ad-interim orders are operating against Defendants since 14.3.2016 and none has affected appearance, what to talk of a Counter Affidavit and Written Statement. At the same time it is also a matter of concern and anguish for this Court, that on the one hand FBR has been complaining at all forums that tax matters are pending in Courts and are not being decided timely, and on the other, no one appears to defend them despite being served since 2016. How genuine the complaints are can be easily inferred from the conduct in this case. Nonetheless, the office of Attorney General is also of no help in these matters, though Federation of Pakistan has been arrayed as a Defendant in this matter, and learned DAG in Court has not instructions.

In the circumstances, let copy of this Order be sent to Member (Legal), FBR, Member (Inland Revenue-Operations), FBR as well as Chairman FBR, Islamabad to take note of the conduct of their officials and also direct appropriate remedial measures. Copy may also be sent to the Attorney General for Pakistan.

We believe nothing has changed and things stand as they were. We cannot appreciate such attitude and have therefore recorded these observations once again.

Let copy of this order be send through MIT-II of this Court to the **Attorney General for Pakistan, Chairman Federal Board of Revenue, Member (Legal) Inland Revenue-FBR, Member Legal (Customs-FBR), Member Inland Revenue (Operations-FBR) and Member (Customs-Operations-FBR)**, to look into the matter and take necessary corrective measures at their end.

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