

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

R.A No.270 of 2011

Date of hearing:
& decision: 18.11.2019

Applicants: Muhammad through L.Rs and another
through Mr. Noor Ahmed Memon, Advocate.

Respondents Nemo for respondents

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this Revision Application, the applicants have called in question the order dated 11.08.2011, passed by learned District Judge, Badin in Misc. Civil Appeal No. 02 of 2011, whereby he dismissed the aforesaid appeal by maintaining the orders dated 21.01.2010 and 07.07.2010 passed by learned Senior Civil Judge, Badin.

2. Brief facts of the case are that in the year 2004, applicants filed suit for declaration, cancelation and permanent injunction. Learned trial court framed the issues, but the applicant failed to adduce evidence and finally learned trial court dismissed the suit on account of non-prosecution under Order IX Rule 3 CPC vide order dated 21.01.2010. The applicants filed restoration application under Order 9 Rule 9 CPC which too was dismissed vide order dated 09.12.2010. The applicants being aggrieved by and dissatisfied with the aforesaid orders preferred Misc. Civil Appeal No.02 of 2011, which was also dismissed vide order dated 11.08.2011, hence he has filed instant Revision Application on 07.10.2011.

3. During the course of arguments, I enquired from learned counsel as to how this revision application is maintainable against the aforesaid orders passed by learned Courts below. He replied that basically the suit was admitted and summons were issued to the defendants and thereafter learned trial Court

dismissed the same for non-prosecution. He preferred application under order 9 Rule 9, CPC alongwith supporting affidavit, but the same was not considered and his application was dismissed vide order dated 28.07.2010 due to non-payment of costs ; that findings of learned Senior Civil Judge on restoration application is based upon misreading and non-reading of facts; that learned trial Court failed to appreciate the factum of medical certificate, which was produced by the applicants, which prima facie shows that applicant was ill on the very date ; that learned trial Court had committed gross illegality while passing the impugned order on the ground that no costs was paid for issuance of summons, which is hardly a ground not to restore the matter.

5. Heard learned counsel for the applicants and perused the material available on record.

6. Record reflects that the applicants filed suit for declaration, cancellation and permanent injunction against the respondent in the year 2004. Record further shows that the issues were framed on 17.07.2009 and the applicants failed to adduce their evidence after framing of issues. The case diaries explicitly show that the applicants were reluctant to adduce their evidence, therefore, learned trial Court was compelled to non-suit the applicants and dismiss their case on account of non-prosecution, restoration application was also dismissed for non-prosecution.

7. Mr. Noor Ahmed Memon, learned counsel has emphasized that if only one chance is given to him, he will produce his evidence before the trial Court and the suit shall be decided on merit rather than dismissal on account of non-prosecution. In my view, this is hardly a ground to restore the suit of applicants to its original position, since learned trial Court has taken pains to discuss each and every point involved in the matter. I am conscious of the fact that the scope under revisional jurisdiction is limited, therefore, I do not find any cogent reason to keep this matter alive, hence this revision application is meritless, which accordingly is dismissed with no order as to costs.

JUDGE