

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

R.A. No. 173 of 2021

Applicants : Ahmed Khan and others through Mr. Mansoor Khan Rind, Advocate

Respondents : Muhammad Ismail and another  
Nemo for respondents

Date of Hearing & Decision : 22.10.2021

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** - The Applicant through this Civil Revision Application under section 115 C.P.C seeks annulment of order dated 16.7.2021 passed by learned District Judge Matiari, by which his Transfer Application No. 18 of 2018 was dismissed on account of non-prosecution vide order dated 13.4.2021.

2. Before, going ahead with the issue in hand I asked learned counsel for the applicant as to how this Revision Application is maintainable when the applicant was given sufficient time by learned District Judge to appear and argue the Transfer Application No.4 of 2021. He has no sufficient reason to justify his absence and his counsel on the day when the matter was taken up on 13.4.2021.and the court waited up to 2.30 however nobody turned up to argue the matter, compelling the court to dismiss the transfer application for non-prosecution. For convenience sake an excerpt of the order is reproduced as under:

"I have given due consideration to the arguments advanced by learned counsel for both the parties. The above transfer application fixed for hearing on 13.04.2021 was dismissed in the afternoon having been called before in the day, again and again, waiting long for applicants and their learned counsel, who remained absent without intimation to this court. Neither the application in hand nor the affidavit in its support bears a word to explain their absence on the said date of hearing. The contention of learned counsel for applicants, during the course of his oral submissions, that while on way to come to attend the court at Matiari, their car broke down and their efforts failed to put it in working condition, has been vehemently controverted by learned counsel for other side. In this, learned advocate for private respondent submitted that had it been the real reason of inability of applicants side, what prevented them to say so in the application in hand or in its supporting affidavit & the assertion now made by learned counsel for the applicants,

for the first time, carries no weight, the same being an apparent afterthought. Learned counsel for respondent went on to add that the applicants side has failed to offer sufficient cause for their absence hence the application in hand be dismissed. To this all nothing came in rebuttal from applicants side; they have already failed to file rejoinder to the written counter affidavit of the other side vehemently opposing the application on the like grounds stated therein. In case reported in 2000 MLD 2047 it has been observed that the question of sufficient cause was a question of fact which was to be decided taking into consideration circumstances and nature of case which prevented a party or his counsel from appearing in the court. Thus, taking into consideration whatever has been stated above, in my humble view no case for grant of this application has been made out.

In view of whatever has been discussed hereinabove, this application merits no consideration & is dismissed accordingly.”

3. It appears from the record that the applicants have challenged the impartiality of the learned presiding officer on the ground that he will not impart justice with them on the issue involved in the matter, I do not accept this ground to be the sole cause to seek transfer of Summary Suit pending before the learned Court; the reasons assigned by learned Presiding officer are sufficient to discard the viewpoint of the applicants. Even the applicants failed to show sufficient cause to appear before the Court on 13.04.2021 when the matter was fixed, the reason assigned by them to substantiate their claim that they were on their way to attend the matter; however, their vehicle went out of order, thus could not put their appearance in court. Prima-facie the ground agitated by the applicants is not sufficient to claim immunity from appearance and repose no confidence in learned Presiding Officer.

4. The applicants have failed to put forth any convincing reason which may justify restoration of Transfer application No.4 of 2021 dismissed on account of non-prosecution, whereby they sought transfer of Summary Suit No.1 of 2017 from the court of Additional District Judge Hala to any other Judge of that District. The reason is that the applicants lack confidence in him. Prima-facie this ground is not valid to transfer the Summary Suit No.1 of 2017. Accordingly, this Civil Revision Application is dismissed.

JUDGE