

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Civil Rev. Application No.S-31 of 2015

Date

Order with signature of Judge

For hearing of main case

02.04.2021

Mr. Riaz Ali Shaikh, holding brief for Mr. Paramanand,
Advocate for applicant.

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

ORDER

KHADIM HUSSAIN TUNIO, J –. Through instant Civil Revision Application, the applicants have challenged the order dated 28.01.2015, passed by learned District Judge, Sukkur, in Civil Appeal No.50/2014, whereby the learned Judge dismissed the Civil Appeal filed by applicants and upheld the order dated 17.10.2014 passed by learned IInd Senior Civil Judge, Sukkur on application under Order IX Rule 9 CPC.

2. Briefly, the facts of the present Revision Application are that the applicants/plaintiffs have filed F.C Suit No.58/2011 (Re. Mian Atta Muhammad and others v. Province of Sindh and others) for declaration and permanent injunction against respondents/defendants regarding property bearing survey No. 2082/3. Respondents/defendants despite service of notice failed to appear and the counsel for applicants/plaintiffs sought adjournment which was denied and on 13.03.2013 the suit was dismissed. Thereafter applicants/plaintiffs filed an application under Order IX Rule 9 r/w Section 151 C.P.C for restoration of the suit which was also dismissed vide order dated 17.10.2014. Then applicants/plaintiffs

filed Civil Appeal No.50/2014 before the learned District Judge, Sukkur which was heard and decided on 28.01.2015 whereby he upheld the impugned order.

3. Learned counsel for the applicants/plaintiffs has contended that the counsel for applicants/plaintiffs on 13.03.2013 had sent adjournment application due to his witnesses being out of station but the same has not been considered by the learned trial Court; that the non-appearance was neither deliberate nor wilful, but same was due to reasons; that the restoration application was dismissed without considering the merits thereof; that the applicants/plaintiffs have shown sufficient cause for restoration of the suit and have also shown that there was no negligence or wilful absence on the part of the applicants/plaintiffs or their counsel on the said date; that law favours adjudication of the cases on merits and technicalities should be avoided in dispensation of justice.

4. On the other hand, learned AAG has supported the orders passed by two Courts below and submitted that no sufficient cause has been shown for restoration of the suit.

5. Heard arguments of learned counsel for the parties and perused the relevant record.

6. It is now well established principle of law that technicalities in dispensation of justice should be avoided and, as far practicable, cases should be decided on merits. Non-appearance of the applicants/plaintiffs' counsel was neither intentional nor wilful,

but beyond their control. However, this Court did not visualize such disposal of the appeal which is a strangulation of justice. It would have been prudent for the learned trial Court to have adjourned the case to a fixed later date to provide a chance to the applicants/ plaintiffs to proceed with the case.

7. In the case of **Imtiaz Ahmed v. Ghulam Ali (PLD 1963 SC 382)**, the Hon'ble Supreme Court has been pleased to hold that *“the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. All technicalities have to be avoided unless it is essential to comply with them on grounds of public policy.”* It was further held in the same judgment that *“any system which by giving effect to the form and not the substance defeats substantive rights is defective to that extent.”*

8. The observations of the Hon'ble Apex Court in the case of **Inam-ur-Rehman Gillani v. Jalal Din and another (1992 SCMR 1985)** read as under:-

“B. Normally, Courts should try to adjudicate the matters placed before them on merits and deviate this course only if they find that process of the court is being abused. The dismissal of cases for non-prosecution should normally be the exception and not rule.”

9. In the case of **Mst. Sardar Begum v. Muhammad Anwar Shah (1993 SCMR 363)**, the Hon'ble Apex Court has held that a

party should not be denied relief on account of technicalities in the procedural law, as the same are framed for the purpose of regulating the legal proceeding, they are intended and designed to foster the cause of justice rather than to defeat it. Moreover, in the case of **Pirzada Niaz Ahmed Farooqui v. Muhammad Bux (2004 SCMR 862)**, the Hon'ble Supreme Court has also restored the petition dismissed by the High Court and has held that conduct of the counsel may be reprehensible, ends of substantial justice demand that the parties should not suffer on account of negligence or indifferent attitude on the part of their counsel in whom they repose full confidence.

10. In the case of **Anwar Khan v. Fazal Manan (2010 SCMR 973)**, Hon'ble Apex Court has been pleased to observe that it is well settled principle that the most important duty of the Courts of law is to do justice between the parties and in the absence of any express power, normally on technical grounds they should not hesitate to give proper relief. It must also be mentioned that civil Courts are Courts of both law and equity and in the absence of special reasons they should also be inclined to do substantial justice and matter of controversy should also be disposed of on merits and not on technical consideration. It is also settled principle of law that the principal object of formalities and procedural provision is safeguard the interest of justice and the procedural provisions unless insurmountable should not be allowed to defeat the ends of justice. The duty of the court is to do justice between the parties. The

procedure prescribed is always for the purpose of doing justice between them and should not come in the way of doing substantial justice.

11. For the foregoing reasons, I am of the humble opinion that the learned trial Court as well as appellate Court were not justified in dismissing the suit due to absence of the applicants/plaintiffs and their counsel only on one day and thereafter for dismissing the restoration application again on the same grounds without considering the cause shown by the applicants/plaintiffs for non-appearance on the date of hearing. Therefore, instant Civil Revision Application was allowed and impugned order dated 28.01.2015 passed by learned District Judge, Sukkur in Civil Appeal No.50/2014 and order dated 17.10.2014 passed by learned IInd Senior Civil Judge, Sukkur on application u/o IX Rule 9 CPC r/w Section were set-aside and suit of the applicants/plaintiffs was restored to its original stage where from it was dismissed subject to payment of cost of Rs.5,000/-. The learned trial Court is directed to record evidence of the parties and decide the matter afresh on merit fully in accordance with law, after providing full opportunity of hearing to the parties. Parties were directed to appear before the IInd Senior Civil Judge, Sukkur on 15.04.2021, vide short order dated 02.04.2021. These are the reasons for the same.

JUDGE