

he sent any intimation/adjournment application which shows that advocate for the defendants has lost his interest in this matter, therefore, leave to defend application stands dismissed in non-prosecution and non-appearance of defendants and their advocate.”

Faced with the situation, the above miscellaneous applications were filed. Applications remain pending for some time whereas on 24.12.2020 since Presiding Officer was on leave, the matter was adjourned to 09.01.2021. The diary sheet provides that it was adjourned for filing leave to defend applications on behalf of defendants 2 and 3 and for hearing of application under section 151, CPC as last and final chance. On 09.01.2021, summary suit was called, the counsel for the plaintiff was present whereas the defendant’s counsel was called absent without intimation. The application under section 151, CPC in respect of an order dated 13.01.2020 was by then pending for arguments since 25.02.2020, that application too was dismissed for non-prosecution. Insofar as this application is concerned, it is a case of the applicant that the date given by the reader is not a date given by the court and hence any order on a date given by the reader is liable to be recalled and it should be a date for the purposes of future proceedings to be given by the court itself. Learned counsel for this proposition has relied upon a judgment of **Nowsheri Khan vs. Said Ahmed Shah**, reported in **1983 SCMR 1092**. I have heard the learned counsel so far as this proposition is concerned. Perhaps, this judgment has not been carefully read by the counsel. Relevant text of the judgment is reproduced as under:

“The Reader of the Court before the amendment in the Civil Procedure Code referred to above, was not authorised to fix a date for proceeding with the suit in the absence of the Presiding Officer of the Court but could fix a date for purposes of enabling the Court to fix another date for the future conduct of the proceedings. It was only as a result of the new rule 5 inserted in Order XVII, that this has become possible. Nevertheless to prevent any plea to the effect that the parties were not cognisant of the date fixed for proceeding with the suit a condition has been laid down, namely, that the Reader shall “hand over to the parties slips of paper specifying the other date fixed for proceeding with the suit or

proceedings." This is mandatory. In this case, admittedly the appellant was not present either on 4-9-1976 when the case first came up for hearing, nor was he present on 8-9-1976 when the Moharrir fixed the case for 16-9-1976. In this situation, there was consequently no question of any slip being handed over to the appellant specifying the next date fixed for hearing of the case. Thus, rule 3 of Order XVII was not complied with and the order of the District Judge dismissing the suit for non-prosecution on 16-9-1976 was illegal. The appeal could conceivably have been dismissed on 4-9-1976 as it was adjourned to the said date by the learned District Judge himself, in the presence of the appellant. However, since the learned District Judge was absent on 4-9-1976 and only the Moharrir was present who obviously could not dismiss the appeal, but required the parties to come on a future date when the learned District Judge was expected to be in attendance and deal with the matter. The date given by the Reader might have become the "date fixed for proceeding with the suit or proceedings", if the parties were handed over the slips of paper specifying the said other date."

There was a situation perhaps prior to the amendment made in Order XVII Rule 5, CPC that the date given by the reader is not to be considered as the date, however, the situation was then altogether changed. The applicant as such is not a beneficiary of such a situation.

Insofar as the applications of defendants 2 and 3 are concerned they were served vide publication dated 06.12.2020 and no such date could be extended either by court or the reader unless the compelling reasons so required and permitted under the law. The reader on 24.12.2020 adjourned it for filing of leave to defend application on behalf of defendants 2 and 3 for 09.01.2021. Reader and even for that matter court had no jurisdiction to extend time for filing leave application against statutory period and that too without any justified reason. By that time the service has already been effected at least by publication on 06.12.2020. In terms of Order XXXVII Rule 3, CPC, the leave to defend application is supposed to have been filed within the period prescribed therein. By 09.01.2021 the time had already elapsed. A statement was filed on 09.01.2021 that defendants 2 and 3 were out of Karachi. The exparte order was then passed against them as well, as by that time, the time for filing leave application elapsed.

For recalling the order dated 09.01.2021 an application under Order IX Rule 7, CPC was filed on 15.01.2021, which was disposed of by an order dated 02.03.2021. By the time the impugned order dated 02.03.2021 was passed the leave application was already dismissed being barred by time and there was no reasonable explanation provided by the counsel in the affidavit except as mentioned in para 4 of application under Section 5 of the Limitation Act, 1908, that the counsels were changed and subsequently on inquiry it revealed that their (defendants 2 and 3's) addresses were false. This defence is immaterial once they were served through all modes including publication and were in court through a counsel. The Applicant has presented a checkered history of being negligent throughout. They remained indolent in respect of summary proceedings. Insofar as the proceedings of the summary suit is concerned, this lethargic and non-serious attitude of the applicants cannot be given due indulgence when not only that the leave application was barred by time but the one which was in time was also not pursued diligently by the applicant. They were even given option by this Court if a security of the claimed amount be provided, which they refused.

In view of the above facts and circumstances, no indulgence as such is required by this Court and the revision application is dismissed along with pending application(s).

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