

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**C. P. No. D-238 of 2022**

**Present:**

Ahmed Ali M. Shaikh, CJ  
and Yousuf Ali Sayeed, J

Petitioner : State Life Insurance Corporation of Pakistan through Waqas Asad Shaikh, Advocate.

Respondents : Nemo.

Date of hearing : 19.04.2022.

**ORDER**

**YOUSUF ALI SAYEED, J.** - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, assailing the Order made on 25.11.2021 by learned VIIth Additional District Judge (MCAC), Karachi, South, however, dismissing Civil Revision No.72/2021 filed by the Petitioner against the earlier dismissal of Civil Suit No.1290/2019 by the learned XIIth Senior Civil Judge, Karachi, South vide order dated 27.09.2021.

2. The backdrop to the matter is that the Petitioner's Suit was dismissed by the trial Court due to default and non-compliance stemming from a failure to file an Affidavit in Ex-Parte Proof and failure to proceed with the matter in accordance with law. The ensuing Civil Revision then came to be dismissed on the ground that the Petitioner ought to inter-

alia have resorted to Order IX Rule 4 with the relevant excerpt from the Order of the Revisional Court reading as under:-

*“4. After hearing the learned counsel for the applicant and perusal of record, it appears that the Civil Suit No.1290/2019 was dismissed in default and non-compliance through the impugned order. The applicant instead of filing application for restoration of the suit or instituting fresh suit as provided under Order IX Rule 4 C.P.C filed the instant Civil Revision. I may reproduce the relevant provision of law i.e. Order IX Rule 4 CPC as under:-*

*Order IX (4) “Plaintiff may bring fresh suit or Court may restore suit to file. Where a suit is dismissed under R.2 or R.3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his not paying Court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall a day for proceeding with the suit.*

*In the light of the above provision of law the efficacious remedy available with the applicant to file application for restoration of the suit or to bring a fresh suit. Hence; civil revision is not maintainable dismissed accordingly with no order as to costs.”*

3. Learned counsel for the Petitioner submitted that the Order of the Revisional Court was erroneous, as the Civil Suit had not been dismissed under Rule 2 and 3 of Order IX CPC, but had in fact been dismissed under Order XVII Rule 3 CPC.

4. Having examined the matter, it is discernible that the Revisional Court essentially determined that through the Order dated 27.09.2021 the suit had been dismissed for non-prosecution, for which the appropriate remedial measures was

to proceed under Order IX Rule 4 CPC. Indeed, albeit the matter having been at the stage of filing of the Affidavit in Exparte Proof, there is nothing in the Order of the trial Court to suggest otherwise. Furthermore, if the contention as to dismissal of the Suit under Order XVII Rule 3 CPC is accepted even then the appropriate course of action would have been for the Petitioner to have filed an Appeal rather than the Revision. Reference may be made in that regard to the judgments reported as Shahid Hussain vs. Lahore Municipal Corporation PLD 1981 Supreme Court 474 and Masooda Begum & 15 others vs. Muhammad Jameel & 7 others 1988 MLD 2846. Be that as it may, under the circumstances of the case, we leave it open to the Petitioner to pursue his remedy in view of the observation of the Revisional Court through an appropriate application before the trial Court, as envisaged, for its decision in accordance with law. The Petition stands disposed of accordingly.

JUDGE

CHIEF JUSTICE

Karachi.  
Dated: