

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
HCA NO. 191 /2011

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Date	Order with signature of Judge
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- 1) For hearing of CMA No. 842/2012.
- 2) For hearing of CMA No. 250/2013.
- 3) For hearing of CMA No. 251/2013.
- 4) For hearing of CMA No. 1841/2013.

13.1.2016.

Appellant present in person.  
Mr. Rana Muhammad Ahmed Khan Advocate for respondent.

- 1) Through listed application the appellant seeks restoration of instant appeal which was dismissed by this Court vide order dated 8.5.2012 which reads as under:-

“On 24.11.2011 when this matter came up for hearing, learned Counsel for the appellant Mr. Zafar Iqbal has filed an undertaking, signed jointly by him and the appellant, stating therein that appellant may be granted one month’s time to vacate and till then the operation of the order of the Executing Court may be suspended so that the appellant can negotiate the matter with the decree holder / respondent. The appellant clearly undertook that after expiry of one month he will vacate the premises in question.

In view of the clear undertaking dated 24.11.2011 the appellant was required to vacate the premises in question after expiry of one month which undertaking has not been honored by the appellant, therefore, this appeal is dismissed. Resultantly, the injunction order passed earlier stands vacated.”

The only ground urged in the restoration application and its supporting affidavit is, that the appellant was informed by his Counsel that though the matter is fixed on 8.5.2012, but he need not come to attend the Court, therefore, his appeal may be restored as it was dismissed on account of the absence of the Counsel.

On the other hand Counsel for respondent submits that the appellant on 24.11.2011 had furnished an undertaking wherein it was stated that if the appellant is unable to negotiate a settlement with the respondent, the premises in question will be vacated and on such assurance, the order of writ of possession was suspended. Per Counsel thereafter the appellant neither settled the matter nor had vacated the premises and therefore, the appeal was correctly dismissed on 8.5.2012 for non-prosecution.

We have heard the appellant in person and the learned Counsel for respondent and have perused the record as well. The instant appeal arises out of an order passed by a learned Single Judge on an application filed under Section 12(2) CPC by the appellant. As noted above, ad-interim orders were passed by this Court on the very first date of hearing i.e. 24.11.2011 on the written undertaking of the appellant, whereby, he undertook to either settle the matter with the respondents, and if otherwise, he will vacate the premises. It appears that after giving such undertaking, the matter has not been proceeded with by the appellant, whereas, he has neither entered into any settlement nor he has vacated the premises, therefore, on the fateful day i.e. 8.5.2012 this Court was compelled to dismiss instant appeal for non-prosecution. Such conduct on the part of the appellant itself does not entitle him for exercising any discretionary relief for restoration of instant appeal. Moreover, the reasons assigned in the supporting affidavit are evasive in nature and in fact puts blame on the appellant's Counsel for which the appellant is free to have recourse in accordance with law against his Counsel, but, does not entitle him for any indulgence for restoration of instant appeal.

In the circumstances, we are of the view that no case for restoration of the appeal has been made out by the appellant and therefore, in the earlier part of the day we had dismissed the restoration application by means of a short order and above are the reasons thereof.

2 to 4) Since the restoration application has been dismissed therefore, these applications have become infructuous and are also dismissed accordingly.

JUDGE

JUDGE

ARSHAD/