

*Order Sheet*

IN THE HIGH COURT OF SINDH AT KARACHI  
**Revision Application No. 158 of 2021**

Date	Order with signature of Judge
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For orders as to maintainability :

**28.09.2022 :**

Syed Samiullah Shah, advocate for the applicant.  
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In compliance of order dated 26.01.2022, the notice was published in Urdu Daily 'Jang' on 02.02.2022, however, respondents 1 and 2 have chosen to remain absent.

Civil Appeal No.223/2017 filed by the present applicant was dismissed on 16.10.2020 for non-prosecution, whereafter the applicant filed an application for its restoration. Through the impugned order dated 24.09.2021, the above application filed by the applicant was dismissed by the learned appellate Court. In the said application filed on behalf of the applicant by his counsel, the counsel had stated that his elder brother had passed away at his native place in Punjab on 10.10.2020 due to sudden heart failure, and due to this reason he had to proceed to his native place. It was further stated by him that in view of the above reason, his absence on the relevant date was not intentional. The said application was duly supported by the affidavit of the counsel. However, the above explanation was not accepted by the learned appellate Court and the application was dismissed by holding that no proof of the death of his brother was filed by the counsel.

I have noticed that while dismissing the application, some observations were made by the learned appellate Court regarding the absence of the counsel on some previous dates. It may be observed that for dismissing a case for non-prosecution, the conduct or absence of the party only on the relevant date is material and its conduct or absence on previous dates should not be made the basis for the dismissal on a subsequent date. It has been the consistent view of the superior Courts that cases should be decided on merits rather than on technicalities. Learned counsel for the applicant undertakes that if the appeal is restored, the

applicant / her counsel shall proceed with the same diligently and shall not seek any adjournment.

In view of the above, the impugned order is hereby set aside and the appeal filed by the applicant is restored to its original position with direction to the learned appellate Court to decide the same within thirty (30) days on merits strictly in accordance with law. The revision application is allowed in the above terms with no order as to costs.

J U D G E