

IN THE HIGH COURT OF SINDH AT HYDERABAD

R.A 266 of 2023 : Fazal Muhammad Chishti vs.
Arif Ali Shaikh & Another.

For the Applicant/s : Mr. Raja Hans Raj Advocate

For the Respondent/s : Nemo.

Date/s of hearing : 23.10.2023

Date of announcement : 23.10.2023

ORDER

Agha Faisal, J. The present civil revision assails order dated 21.07.2023 rendered by the Court of 8th Additional District Judge, Hyderabad in Summary Suit 101 of 2019. The order determined the fate of an application filed under Order 9 Rule 7 CPC for recalling of the order dated 28.11.2022. The application was dismissed and the operative part is reproduced herein below:

“Record witnesses that after closure of the side of evidence of plaintiff on 24.03.2022 about more than eight months period was allowed and within this long standing period many dates came for getting of defendant evidence but he did not consider it proper to get his evidence recorded except filing of different types of applications. Be that as it may, the order by which the side of defendant was closed was passed on 28.11.2022, whereas this application was filed on 25.05.2023 after delay of about six months which is not explained in its supported affidavit. Strange to be noted that not a single statement is given in the application or in its affidavit which may justify and explain such delay. It is surprising to note that in written arguments, it is claimed that on 28.11.2022 the defendant was present in early hours of morning and if it being was the position, as to why the application for opening side was filed after such delay of months together and further if it was so, as to why this ground has not been agitated in the affidavit. Law provides that if like application is filed after period of limitation, each day of delay is to be explained with clarity as after such mandatory period, certain rights accrued in favour of the other side. Having so, the instant application being time barred is dismissed. Further applications/statements pending on file having been filed by defendant at Ex.25 to 30 also stand dismissed being infructuous. Even today after filing of written arguments, the learned counsel for defendant filed four applications taken on record at Ex.37 to 40 which too are dismissed being infructuous.”

2. The chronology of events delineated in the impugned order has not been denied and no cogent justification for the applicant’s conduct was provided. No justification whatsoever was provided for the delay / default particularized in the order impugned.

3. Learned counsel for applicant is unable to demonstrate any infirmity in respect of the impugned orders and also remained unable to demonstrate that the conclusion drawn could not have been predicated upon the rationale employed. This Court has considered the contentions of the applicant and has noted the inability to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the impugned

orders are either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity. It is trite law¹ that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the orders impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate fora. In view of foregoing, the present revision application is found to be devoid of merit, hence, hereby dismissed along with pending application.

JUDGE

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¹ Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.