

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No.167 of 2023

---

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

---

1. For orders on CMA-2767/2023
2. For orders on office objection
3. For orders on CMA-1363/2023
4. 5. For hearing of main case.

**26.10.2023**

Mr. Muhammad Irfan Rajput, advocate for applicant

1. Urgency granted.

2,3,&4. The 7<sup>th</sup> Additional District Judge, Hyderabad passed an order dated 29.03.2023 under Order 17 Rule-3 CPC and dismissed the suit. It is considered illustrated to reproduce the order herein below:

*"Matter called, when none is present for plaintiff or his counsel. Record transpires that the matter is fixed for evidence on 07.03.2023, 16.03.2023 & 29.03.2023.*

2. *On 07.03.2023 the counsel for plaintiff filed application for condonation and on request, matter was adjourned to 16.03.2023, when on such date plaintiff was called absent and his counsel was present and again condonation application was filed. Last & final chance was extended for appearance on 29.03.2023 at 08:30 a.m.*

3. *Today, repeated calls were made, when neither plaintiff nor his counsel was present till 10:15 a.m. and thereafter, undersigned proceeded for meeting before Honourable District & Sessions Judge, Hyderabad on the directions of Honourable Sindh High Court regarding disposal and when returned, the matter was again taken up at 12:00 p.m. when the plaintiff simply stated that she does not have any document and cannot record her evidence.*

4. *The conduct of plaintiff clearly shows that she is not having any interest in the matter and moreover, she was directed thrice by this court with specific last & final chance but even then, she is not prepared to give her evidence. Under these circumstances, her right is hereby debarred and suit is dismissed U/O 17 Rule 3 CPC".*

The present revision has been filed against the aforesaid order and at the very onset learned counsel was confronted as to how the same merited interference per section 115 C.P.C. A query was also put as to whether the order impugned was subject to appeal. Learned counsel did not articulate any justification on either count.

The narration and chronology stated in the impugned order has not been disputed and no case is made out to suggest that the conclusion drawn could not be rested upon the rationale relied upon.

Even otherwise, learned counsel was unable 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 order is 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 law<sup>1</sup> 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

---

<sup>1</sup> 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*.

usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the order impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forum.

In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed *in limine*, along with listed applications.

Judge

Ahmed/Pa,