

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.
R.A. No.63 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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For order on office objections
For order on CMA-1554/2023
For order on CMA-1555/2023
For hearing of main case.

04-12-2023

Mr. Fayaz Ahmed Laghari, advocate for applicants.

Civil Appeal No.49 of 2022 was dismissed for non-prosecution by the VIIIth Additional District Judge, Hyderabad. Present applicants filed a restoration application in respect thereof and the same was also dismissed for non-prosecution vide order dated 07.10.2022, same is reproduced herein below:

“Civil Appeal is called. Appellants and their counsel called absent without any intimation. Prior this vide order dated 23.05.2022 appeal of appellants was dismissed in non prosecution. Thereafter advocate for appellants filed application U/O 41 Rule 19 CPC on 31.05.2022, order passed on it advocate to be heard but advocate for appellants is not arguing the application U/O 41 Rule 19 CPC neither appearing before court nor sent any intimation which shows that appellants and their counsel have no interest in matter, therefore, application U/O 41 Rule 19 CPC is hereby dismissed in default and non prosecution.”

Present Revision assails the aforementioned order, however, the narrative / observations contained in the impugned order are not controverted. Counsel also remained unable to demonstrate as to why the impugned finding could not be rested upon the rationale delineated.

A party is required to remain vigilant with respect to legal proceedings; more so when the same have been preferred by the party itself. The truancy of the applicant from the proceedings under scrutiny is *prima facie* apparent and the same has also been admitted presently. Under such circumstances it was the prerogative of the Court to determine the proceedings and that is what appears to have been done. Counsel remained unable to justify the persistent absence and no case has been made out to condone the default. The Supreme Court has observed in *Nadeem H Shaikh*¹ that the law assists the vigilant, even in causes most valid and justiciable. The fixation of cases before benches / courts entails public expense and time, that must not be incurred more than once in the absence of a reason most genuine and compelling. Default is exasperating and such long drawn ineptitude cannot be allowed to further encumber pendency of the Courts.

The appellate court appears to have exercised its jurisdiction and no infirmity in such regard is manifest. It is trite law² that where the fora of subordinate jurisdiction had exercised its discretion in one way and that

¹ Per Qazi Muhammad Amin Ahmed J. in *SECP vs. Nadeem H Shaikh & Others* (Criminal Appeal 518 of 2020); Order dated 27.10.2020.

² 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.

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 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.

Notwithstanding the foregoing, 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.

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,