

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

2nd Appeal No.104 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on CMA-3512/2023
2. For orders on CMA-3513/2023

18.12.2023

Mr. Shoukat Ali Pathan, advocate for appellant.

On 13.10.2023 adjournment was sought on behalf of the appellant's counsel and the matter was adjourned, as sought. On 23.10.2023 the present appeal was dismissed for non-prosecution on the premise that the appellant was unrepresented and same was the case on last date of hearing.

The appellant filed a restoration application however the same was also dismissed for non-prosecution on 11.12.2023.

Now once again an application has been filed seeking restoration of the application, filed for restoration of the appeal. The ground pleaded in the affidavit in support of the application is that earlier another counsel was appearing in the matter when the appeal was dismissed for non-prosecution; subsequently a new counsel was engaged who could not appear on the relevant date when the restoration application was dismissed.

The affidavit also states that the appellant was present in Court on 11.12.2023, however, the same is not manifest from the order sheet. Upon query, learned counsel submits that although the appellant stated that he was in court, however, he did not appear on the rostrum when the matter was called.

The record cited supra *prima facie* demonstrates the disinterest of the appellant in the present proceedings. No justification for the absence of the respective learned counsel has been articulated.

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 appellant from the proceedings under scrutiny is *prima facie* apparent and the same has also been admitted by the newly engaged counsel. 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, which 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.

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

Under such circumstances no case appears to have been made out to grant this application, therefore, while granting urgency, the same is dismissed *in limine*.

Judge,

Ahmed/Pa,