

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

R.A. 45 & 46 of 2023

| DATE | ORDER WITH SIGNATURE OF JUDGE |
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21.12.2023.

Barrister Izhar Hameed, Advocate for applicants

Briefly stated; Summary Suits 7 & 8 of 2019 were filed before 2nd Additional District Judge Tando Allahyar. These suits were dismissed for non-prosecution on 31.05.2023 and the respective restoration applications were also dismissed on 04.10.2023. These orders are assailed before this Court and per request of learned counsel heard and determined conjointly.

The facts and grounds are similar / connected, hence, the record of M.A. 45 of 2023 shall be considered for the purpose of present determination, being representative *inter se*. It is considered illustrative to reproduce the operative part of the order dated 31.5.2023 herein below:

“Today, once again matter fixed for evidence. The learned counsel for plaintiff moved transfer application before Honourable District Judge Tando Allahyar which already stands disposed of as dismissed. As per National Judicial Policy, civil cases especially summary Suit are to be kept on fast track. The Suit in hand is without progress on the part of plaintiff despite of ample opportunities extended in his favour but failed to follow the directions of this Court and floated the Orders of this Court. Although, plaintiff is present in Court but his counsel once again make adjournment application and Honourable August Supreme Court of Pakistan discourages frequent adjournments on flimsy grounds just to delay and linger on the matter on one another ground.

Adjournment application filed by learned counsel for plaintiff is having insufficient ground to adjourn the matter, meritless, same is hereby dismissed with no order as to costs. Resultantly, summary Suit in hand is hereby dismissed in default with no Order as to costs”.

An application under Order IX Rule 9 CPC was preferred and the same was dismissed vide order dated 04.10.2023 and after detailed deliberations; the operative findings are reproduced herein below:

“That after passing such order the plaintiff’s counsel moved restoration application U/O 9 R 9 CPC with the ground that due to unavoidable circumstances he could not proceed the case but this is no sufficient or cogent ground to restore such matter which is older one and having more that 14 adjournments and when the clear directions of NJMPC were communicated through reader diary dated 10.05.2023 , but learned counsel did not pay any heed or serious attention and now even by intending to make restore the Suit there is need to show solid grounds and mere stating in application that due to some unavoidable circumstances could not proceed the case is not the proper reply nor it can be repay the pain, agony and financial loss of defendant’s side who has faced the same case since last 4 years.

Hence, in view of above detailed discussion, I am of the view that application in hand requires no consideration and being meritless, same is hereby dismissed”.

Per learned counsel, the then counsel appearing in the respective suits could not appear on account of many reasons and even otherwise since substantial rights are involved, the matter must be adjudicated on merits, hence, appellant ought not to be non-suited on mere technicalities.

Heard and perused. The learned counsel was confronted with the narrative contained in the impugned orders and asked as to whether it was commensurate with the facts; he replied in the affirmative. Learned counsel was then asked to demonstrate any infirmity in the order meriting interference under Section 115 of the Code of Civil Procedure, however, he remained unable to do so.

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.

The respective courts appear to have exercised their 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 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, these revisions are found to be misconceived and devoid of merit, hence, hereby dismissed along with listed applications. The office is instructed to place a copy hereof in the connected revision.

Judge

A.Rasheed/stenographer

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*.