

# IN THE HIGH COURT OF SINDH AT HYDERABAD

RA 250 of 2022 : Abdul Wahab Memon Vs. P.O Sindh & Others  
For the petitioner : Mr. Qurban Ali Baat, Advocate  
Date/s of hearing : 22.12.2023.  
Date of announcement: 22.12.2023.

## ORDER

**Agha Faisal, J.** Briefly stated, F.C.Suit No.868 of 2017 filed before Vth Senior Civil Judge Hyderabad and same was dismissed for non-prosecution on 15.09.2020, inter alia on the premise that despite repeated opportunities the plaintiff therein has failed to proceed with the Suit for more than 2-1/2 years.

An application U/O IX Rule 9 CPC was then filed and same was dismissed vide order dated 01.04.2022. Dismissal order observes that Suit had been lingering-on for more than 2-1/2 years and that the default had subsisted despite cautions having been issued.

Civil Appeal No.13 of 2022 was filed before VI Additional District Judge Hyderabad and same was dismissed vide judgment dated 23.08.2022.

Present revision assails, the respective orders on the premise that on a certain date, the then plaintiff was unable to attend on account of covid and adjournment application had also been preferred.

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. It is also noted that the entire justification for default articulated is in respect of a single date of hearing and no rationale was endeavored to be provided for the delay of two and a half years, as recorded supra.

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. 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*<sup>1</sup> 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.

---

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

The respective courts appear to have exercised their jurisdiction and no infirmity in such regard is manifest. It is trite law<sup>2</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 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 forums.

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 either 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 application.

Judge

A.Rasheed/stenographer

---

<sup>2</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*.