

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.974 of 2008

| Date | Order with signature of Judge(s) |
|------|----------------------------------|
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1. For hearing of CMA No.15860/2023.
2. For hearing of CMA No.15859/2023.

16.01.2024

Syed Zaeem Haider, advocate for the plaintiff.

This suit was dismissed on 19.09.2023 for non-prosecution vide the following order:

“Matter is pending since 2008. Diary demonstrates chronic absence of the plaintiff / plaintiff’s counsel. On 11.1.2023 caution was recorded, however, situation remains the same and even today plaintiff is unrepresented. It appears that the plaintiff has lost interest in proceeding with the matter. Suit is dismissed for non-prosecution along with pending application/s.”

Subsequently these applications were filed to for restoration and to condone delay in filing the application for restoration.

Per newly engaged learned counsel, the previous counsel had not been aware of the relevant date on which the suit had been dismissed, however, subsequent to his filing the current applications, he has been superseded by the present counsel. It was added that since the matter was fixed for final arguments, hence, ought not to have been dismissed on the mere technicality of default. In so far as the application per section 5 of the Limitation Act 1908 is concerned, learned counsel submits that the same is not pressed, hence, hereby dismissed as withdrawn.

It is imperative to denote that the persistent truancy of the plaintiff from the proceedings has not been denied. It is well settled law that a matter listed for arguments could be dismissed for non-prosecution; as is apparent from preponderant authority of the superior courts¹. The honorable Supreme Court has recognized that such dismissal would even be attracted in revision² and reference³ matters.

¹ Per *Muhammad Ali Mazhar J.* in *Al Waqar Corporation vs. Rice Export Corporation* reported as 2011 MLD 266; *Yawar Hussain vs. Ansar Ali Khan* reported as 2010 CLC 46; *Sher Muhammad vs. Ahmad Khan* reported as 2004 CLC 1016; *Abid Mahmood vs. Abdul Aziz* reported as 2003 YLR 3196; *Qaim Ali Khan vs. Muhammad Siddique* reported as 1987 SCMR 733; *Manager Jammu & Kashmir State Property in Pakistan vs. Khuda Yar* reported as PLD 1975 Supreme Court 678.

² Per *Saqib Nisar J* in *Ghulam Qadir vs. Sh Abdul Wadood* reported as PLD 2016 Supreme Court 712.

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 plaintiff 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*⁴ 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.

On 19.09.2023 it was the present suit that was fixed for hearing⁵ and the order passed aptly encapsulated the reasons relied upon. The applicant's / plaintiff's counsel has been unable to demonstrate that the said order could not have been rendered on the rationale cited⁶. In view hereof the application seeking restoration of the suit is found to be devoid of merit, hence, is hereby dismissed.

Judge

Khuhro/PA

³ Per Syed Mansoor Ali Shah J. in *CIR vs. Rafeh Limited (Civil Petition 310-L of 2017 and connected matters)*; Judgment dated 15.07.2020.

⁴ Per Qazi Muhammad Amin Ahmed J. in *SECP vs. Nadeem H Shaikh & Others (Criminal Appeal 518 of 2020)*; Order dated 27.10.2020.

⁵ Per Mian Saqib Nisar J. in *Rana Tanveer Khan vs. Naseerudin* reported as 2015 SCMR 1401.

⁶ *Ghulam Qadir vs. Haji Muhammad Suleman* reported as PLD 2003 Supreme Court 180; *Muhammad Naeem vs. KA Bashir* reported as 2010 CLC 1039; *Ciba Geigy (Pakistan) Limited vs. Muhammad Safdar* reported as 1995 CLC 461; *Haji Muhammad Sharif vs. Settlement & Rehabilitation Commissioner* reported as 1975 SCMR 86; *Zulfiqar Ali vs. Lal Din* reported as 1974 SCMR 162.