

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P. No.S-23 of 2023

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Date	Order with signature of Judge
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REASONS DATED 13.05.2024

Ms. Saba Khan, Advocate for petitioner.

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The present petition was dismissed on merits vide order dated 11.03.2024, in the following terms:

“No one is present on behalf of the petitioner. Similar was the case on last date of hearing. Even on first date viz. 29.11.2023, none was present. It appears that instant petition has been filed by the petitioner only to linger on the proceedings to injure interest of the respondent. The appellate Court in the instant case has only granted medical expenses to the respondent/wife while the trial Court had granted maintenance for Iddat period only. I don't see any illegality in any of the orders impugned herein. Accordingly this petition is dismissed being meritless.”

A new counsel was engaged by the petitioner and an application for restoration was preferred; being demonstrably time barred.

Learned counsel for the petitioner submitted that application be allowed and petition be restored on the grounds that no limitation was provided for filing of restoration application under the Limitation Act, 1908 and even if the residual article is invoked the said limitation would be three years.

Heard and perused. In so far as the issue of limitation is concerned, the petitioner's counsel has perhaps overlooked Article

163 of the Limitation Act, 1908, which provides the period of limitation to set aside a dismissal for default. In view of the said law the present application is hopelessly time barred. Furthermore, even though section 5 of Limitation Act, 1908, has been held applicable in matters per Order 9 CPC, no application in such regard has been preferred. Therefore, no case has been set forth to consider an application prima facie barred by limitation<sup>1</sup>.

Notwithstanding the foregoing, it is well settled law that a matter listed for hearing of main case could be dismissed for non-prosecution; as is apparent from preponderant authority of the superior courts<sup>2</sup>. The honorable Supreme Court has recognized that such dismissal would even be attracted in revision matters<sup>3</sup>. On 11.03.2024 it was the present petition that was fixed for hearing<sup>4</sup> and the order passed aptly encapsulated the reasons relied upon. The petitioner's counsel has been unable to demonstrate that the said order could not have been rendered on the rationale cited<sup>5</sup>. In view hereof these applications are found to be misconceived and even otherwise devoid of merits, hence, are hereby dismissed vide short order dated 09.05.2024 in the following terms:

“1. Urgency granted.  
2-4. Arguments heard. For the reasons to follow,  
the instant petition alongwith the listed

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<sup>1</sup> Per M Javed Buttar J in Mian Muhammad Asif vs. Fahad & Another reported as 2009 SCMR 1030

<sup>2</sup> 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

<sup>3</sup> Per Saqib Nisar J in Ghulam Qadir vs. Sh Abdul Wadood reported as PLD 2016 Supreme Court 712

<sup>4</sup> Per Mian Saqib Nisar J. in Rana Tanveer Khan vs. Naseerudin reported as 2015 SCMR 1401

<sup>5</sup> 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.

application is dismissed being barred by limitation.”

Above are the reasons of short order.

JUDGE

Aadil Arab