

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1128 of 2008

Date	Order with signature of Judge(s)
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1. For orders on CMA No.2633/2024.

22.02.2024

Mr. Khilji Bilal, advocate for the plaintiff.

1. This suit was dismissed for non-prosecution on 09.02.2024, which is reproduced herein below:

“Suit is pending since 2008 without any significant progress and remains listed for final arguments without proceeding. Learned counsel for defendant points out that on atleast three previous dates the matter is not proceeded on account of plaintiff’s counsel and even today plaintiff’s learned counsel has appeared in court without his file merely to seek an adjournment. It appears that the plaintiff has lost his interest in this matter. Suit is dismissed for non-prosecution alongwith pending application/s.”

This application has been moved, seeking restoration on the premise that the suit fixed for final arguments cannot be dismissed for non-prosecution; that senior counsel (Mr. K.A. Wahab, advocate) was not available at High Court on that day; and further that since the counsel was present, hence dismissal could not have been ordered.

The primary assertion, that a matter at the stage of arguments could not be dismissed for non-prosecution, could not be corroborated by the counsel. 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 honourable Supreme Court has recognized that such dismissal would even be attracted in revision² and reference³ matters.

In so far as the second assertion is concerned, learned counsel was queried as to whether the senior counsel, said to have been busy that day, had ever appeared in this suit pending since 2008. The response was unequivocally in the negative.

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.

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.*

The dismissal order records that the plaintiff's learned counsel, present before the Court today, had appeared in this matter, pending since 2008, without the Court file and despite requests did not proceed with the matter. Learned counsel was queried as to whether the Court was bound to keep a case pending on the docket indefinitely if a counsel appeared, however, refused to proceed with the case. No satisfactory response was articulated in this court either.

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. 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, refusal to proceed, 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 09.02.2024 it was the present suit that was fixed for hearing⁵ and the order passed aptly encapsulated the reasons relied upon. The applicant's counsel has been unable to demonstrate that the said order could not have been rendered on the rationale cited⁶. In view hereof this application is found to be devoid of merit, hence, is hereby dismissed in limine.

Judge

Khuhro/PA

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.