IN THE HIGH COURT OF SINDH AT KARACHI

R.A. NO.28/2009

Applicant : Muslim Abbas Khan,
through M/s. Khursheed Javed and Abdul Ghaffar Kalwar, advocates.

Respondents : Safdar Hussain Barlas and others,
Mr. Rehan Aziz Malik advocate for respondent No.3.

Date of hearing : 27.04.2021.

Date of announcement : 03.06.2021.

J U D G M E N T

SALAHUDDIN PANHWAR, J. Precisely relevant facts are that applicant filed Civil Suit No.1145/1988 before this court for declaration, cancellation of documents and permanent injunction before this Court which was transferred to civil court below due to increase in pecuniary jurisdiction of civil courts, later on suit was dismissed on 26.11.1999 under Order XVII Rule 2 CPC; applicant filed two applications, one for restoration of the suit and another application for condonation of delay in filing first application, supported by affidavit of applicant/plaintiff, his counsel Mr. Farooq H. Naik and another affidavit of Mr. Aqil Lodhi advocate; both these applications were dismissed by order dated 20.03.2006; applicant assailed that order before appellate court by filing an appeal which was also dismissed, hence this Revision Application.

2. Learned counsel for applicant has argued that Suit No.1145/1988 for Declaration, Cancellation of documents and

Permanent injunctions was filed before this Court in the year 1988 and thereafter due to change in pecuniary jurisdiction was transferred to District & Sessions Judge Karachi (South) and in January 1999, the said suit was transferred to learned VI Senior Civil Judge Karachi (South) where it was renumbered as Suit No.1917/1996; that applicant (plaintiff) had left Pakistan for Canada in the year 1997 and settled there and he returned to Pakistan on 27.12.2004 and on visiting his counsel on 30.12.2004 found out that suit was dismissed; that it is too admitted position that from the time of transfer till the date of renumbering of the said suit, none of the party was served with court motion notices as required under the law or intimated about the date of hearing; that after transfer of the suit, learned VI Senior Civil Judge Karachi (South) fixed first date of hearing on 06.03.1999 and summons were ordered to be issued to the parties and their counsel by way of pasting in derogation of natural principles of justice; that since the date of order for issuance of notices, the notice by way of pasting was issued only once on 30.10.1999 yet none was present on 03.11.1999 however learned trial court held service good by way of pasting and adjourned the case to 08.11.1999 for recording statement of bailiff, on 08.11.1999 no one was present yet learned trial court recorded statement of bailiff and adjourned the case for plaintiff's evidence, that learned trial court dismissed the suit under Order 17 Rule 2 CPC on account of absence of the applicant and his counsel vide order dated 26.11.1999; that order of the court for direct pasting of court motion notices was in derogation of Section 24-A and provisions of substituted service as postulated under Order V Rule 20 C.P.C; that

no any notice was ever issued on the permanent address of the applicant as given in the title of the plaint; that the learned trial court dismissed the suit in hasty manner without affording opportunity to the applicant to lead evidence in the matter; hence order dated 26.11.1999 is a void order. It was further argued that applicant on coming to know about dismissal of suit, filed application under Order IX Rule 9 R/W Section 151 CPC for restoration of suit and application under Section 5 of Limitation Act for condonation of delay on 11.01.2005 which were dully supported by affidavits of applicant and his counsel as well as affidavit of Mr. Aqil Lodhi advocate who was occupying the office of Mr. Farooq H Naek advocate after shifting so also by an affidavit of one Abdul Samad Khan the resident of plaintiff's second address as given in title of the plaint, however said applications were dismissed by a common order dated 20.03.2006 by learned trial court without applying judicial mind; that order dated 20.03.2006 was challenged by the applicant by filing an appeal bearing No.12 of 2006 under Order XLIII Rule 1 CPC R.W Section 151 CPC before learned 3rd Additional District & Sessions Judge Karachi (South), however said appeal was also dismissed vide order dated 15.09.2008, hence this Civil Revision Application. It was contended that learned trial Court and appellate exercised discretion contrary to law and misunderstand the dictum laid down by the superior courts and that the learned Trial Court and appellate court contrary to settled principles of law *Audi Alteram Partem* (No man should be condemned unheard) passed the impugned order; that under the principles of fair trial Article 10-A of Constitution of Islamic Republic of Pakistan, 1973, impugned orders are *ab-initio*, void, illegal and

liable to be set aside. He has relied upon 1986 CLC 2543 Karachi, 1988 CLC 1208 Karachi, AIR 135 Lahore 169, 2012 MLD 39 Sindh, 1987 SCMR 150, 1997 SCMR 923, 2001 YLR 1116 Karachi, 1996 SCMR 1703, 2001 SCMR 99 AND 1994 MLD 664 Karachi.

3. Learned counsel for respondent has contended that court motion notice was duly pasted on the outer door of applicant at the address given by him, that neither applicant nor his counsel intimated about the shifting of the applicant to Canada nor his counsel filed new address of applicant and address of his counsel's new office for service as were required; that court motion notice service was held good in accordance with law after recording statement of bailiff and all codal formalities were complied with; that it is a case of long unexplained delay of more than five years, hence orders impugned by applicant are well in accordance with law and do not call for any interference. He has relied upon 2014 SCMR 1694, PLD 1979 SC 18, 1987 SCMR 150, SBLR 2006 SC 136, NLR 2006 SC Civil 11, PLD 1979 LAHORE 546, 1986 CLC 366, 2008 SCMR 1766, 2001 SCMR 405, 1986 CLC 178, 2006 CLJ 1005, KLR 2009 SC 25, PLD 2004 SC 489, PLD 2004 Lahore 21, 2011 LAW NOTES 92, AIR 1936 Oudh 22, 1982 CLC 767 and 1995 MLD 484.

4. I have heard the respective parties and have also perused the available material with *able* assistance of the learned counsel (s) for respective parties.

5. *Prima facie,* the *core-issues* appear to be the same which the learned appellate Court formed as ***points for determination*** i.e:-

> "1. Whether service of Court Motion Notice upon the appellant/Plaintiff was proper?

2. Whether delay in filing the restoration application was Explained and justified?"

Out of the above *two*, the *first* one was / is decisive in nature because the same shall *undeniably* have effects upon the second point for determination. It would be conducive to refer operative part of the findings of the learned appellate Court on *first* point for determination which reads as:-

> "It is an admitted position that the trial court has ordered service of Court Motion Notice **through Court bailiff and by way of pasting at the available addresses of the appellant and his counsel**, which according to Court record was duly effected and matter was further adjourned to the next date for evidence of the Plaintiff side after the statement of the concerned bailiff was recorded. However, there appears no dispute that **the change of address was neither notified on record of the trial court by the learned counsel in terms of Order VII rule 24 CPC**, when .../vacated his office in the year 1992. It is further an admitted position that case was instituted in the Honourable High Court of Sindh and was transferred to lower court **by an administrative order in the year 1996**, thus it was obligatory upon the **learned counsel for the appellant to have notified the change of address no sooner he had shifted the office in year 1992**, while the case was still pending trial before the Honourable High Court. This having not been done, the trial court on transfer of the suit was left with no option but **to send the notices at the available address on record and for that the trial court with discretion to the effect service in whatever mode** it may deem fit and in this connection authority PLD 1979 Lahore 546 cited by the learned counsel for the respondent No.3 is relevant. Since both sides were served by same mode, which remained effective in case of the respondent and put in appearance, therefore, I am of the view that the service against the appellant was proper in the circumstances, hence point no.1 is replied in affirmative."

Prima facie, it is not a matter of dispute that the suit was transferred on ***administrative ground*** therefore, it was *obligatory* upon the transferor Court to have intimated the parties regarding transfer but where the record does not show such appearance of parties before

transferor Court and issuance of direction for appearance before transferee Court then it becomes *obligatory* upon the transferee Court to serve the parties with ***court motion notice*** before proceeding any further. It may be added that the requirement of *fair-trial* always demand a safe course to be adopted which in matter (s) of transfer on ***administrative ground*** would require service of notice by transferee Court. Guidance is taken from the case of *Taqi Muhammad v. Muhammad Afzal Khan* 1993 MLD 1025 that:-

> "... It was imperative to issue notices to the parties informing them that the case had been transferred from one Court to another. In absence of such a notice, a party could well plead that he did not know in what Court he has to appear. The fact that a notice was required for the act of transfer of a suit under an administrative order was supported by cased reported in.....

Since, it is evident from the record that the transferee Court *did* order for issuance of notices / summons upon the parties and their Counsel through two modes *simultaneously* therefore, provision of section 24-A(2) of the *Code* lost its significance and was never of that much *importance* as was given by the learned lower Court (s).

6. I have no hesitation in adding that once the transferee Court decided to serve the parties of factum of having received the matter by way of transfer then it was obligatory upon it (*transferee Court)* to follow the procedure, as provided by the *Code* itself because the settled principle of law, *undeniably,* is reaffirmed in the case of *Govt. of Sindh through Secretary & D.G Excise & Taxation & another v. Muhammad Shafi & others (*PLD 2015 SC 380) as:-.

> "It is settled principle of law that where law requires an action to be done in a particular manner, it has to be done

> accordingly and not otherwise. At this point, we may also add that if an act is done in violation of law, **the same shall have no legal value and sanctity, especially when the conditions / circumstances which may render such an act invalid have been expressly and positively specified in law**

In another case of *Muhammad Anwar & Ors v Mst. Ilyas Begum & others* PLD 2013 SC 255, it is held as:-

> "It is a well known principle of law that where the law requires an act to be done in a particular manner it has to be in that manner alone and such dictate of law cannot be termed as a technicality.
>
> ….it is not open and permissible for the Court to pass any kind of order, the courts like, solely on the basis of its (courts) vision and wisdom , rather the courts are bound and obligated to render decisions in accordance with law and the law alone. And in any case the courts have absolutely no authority to act, in a capricious , whimsical and arbitrary manner, and / or by violating the provisions of law.

Here, it is worth to add that the *Code* itself details the complete manner and mechanism for procuring service upon *parties.* Such courses, per the *Code* itself, are divided in two part (s) i.e ***'ordinary service'*** and ***'substitute service'.*** The ***'ordinary service'*** means attempt (s) to get service on ***'person'*** while the course of ***'substitute service'*** is an exception hence the mode of ***'substitute service'*** is to be resorted *only* if the party is avoiding service through ***ordinary course.*** Needless to add that service through mode of ***'pasting / affixing notices/summons'*** is included in ***substitute service*** as is evident from bare reading of Order V rule 17 or that of Order V rule 20 of the *Code*. These provisions, on bare reading thereof, make it quite obvious and clear that such course would be resorted to *only* if the party is avoiding service or cannot be found. Such course, without *first* attempts to procure service on person, was / is not

lawful. Reference may well be made to the case of (Syed Muhammad Anwar v. Shaikh Abdul Haq) 1985 SCMR 1228.

7. In the instant matter, the record, nowhere, shows that an attempt was made to procure service upon applicant (plaintiff) by ordinary way and that order of effecting service by way of pasting notices / summons was under some order because of *failure* of ordinary course. On the other hand, the record reflects that service of Court Motion Notice was simultaneously ordered through both course (s), which, per *prescribed* procedure and annunciated principles of law is not legal.

Be that as it may, let's have a look at the statement of the *bailiff* which reads as:-

> "TO COURT:
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> I, Siyam Lal Bailiff of the District and Sessions Court Karachi South. I have received the Court motion notices by way of pasting. I went to given address of plaintiff and pasted the Court Motion Notice. I went to given address of the counsel for plaintiff address and pasted the court motion notice. I also went to given address of defendant No.1 and his counsel address and both court motion notices pasted as per order of the court. And I went to given address of the defendant No.2 and 3 and pasted the Court Motion Notice as per order. The defendant No.5 address at D.H.A Karachi pasted the Court Motion Notice and also his counsel Mr. Khalid Latif Advocate I pasted the court Motion Notice as per order. I do not know personally. My report is submitted."

The *bare* perusal of the said statement makes it quite obvious that the Bailiff of the Court, nowhere, claimed to have got identified the ***'places of parties and their counsels'*** by someone or that as to in whose presence the copies were so affixed, though the provision of Order V rule 17 of the *Code* makes it obligatory upon the bailiff while making service by such way, as is evident from relevant part of the Order V rule 17 of the *Code.* The same reads as:-

> "…… with a report endorsed thereon or annexed thereto **stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed."**

I am quite surprised that how a *bald* statement of having affixed the notices / summons was believed when the bailiff never detailed the circumstances for identification of the *specific* places nor knocked the door of such *places* when same were never claimed to be ***locked*** so as to confirm that these are ***proper*** place (s).

Be that as it may, I am surprised that the bailiff also claims that he affixed the notices / summons on offices of counsel which is *surprising* because these office (s) were never claimed to be closed *permanently* and even no effort was made that still the counsel (named in notice) was / is continuing such office or otherwise. All these circumstances were / are always sufficient to disbelieve such statement *least* order for service, particularly when the process service officer (bailiff) never satisfied to have discharged his obligations, as provided by Order V rule 17 of the *Code.* This aspect was never *properly* appreciated by the learned appellate Court while responding to the point for determination No.1.

8. While dealing with *almost* similar facts and circumstances, the said view is affirmed in the case of *M/s Sea Breeze Ltd. v. Mrs. Padma Ramesh & another* 2012 MLD 39 (Sindh) as:-

> 13. In view of hereinabove facts, and from perusal of case diary of the learned trial Court, it is evident that after transfer of the case on administrative ground i.e. on account of change in pecuniary jurisdiction provisions of section 24-A(2), C.P.C. as well as provisions of Order V, Rule 20, C.P.C. were not observed by the learned trial Court **hence, the**

> **respondent/plaintiff could not be served**, which resulted in an ex parte order of dismissal of the suit. Nothing has been brought on record by the learned counsel for the petitioner to show that **the respondent/plaintiff or her counsel was duly served with the Court motion notice or she has avoided to receive summons or Court motion notice**.
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> 14. As per case diary of the learned trial Court, it appears that on 11-1-2000 for the first time, Court motion notice was directed to be issued to the plaintiff or his counsel, however, from record it is seen that such notices were never served upon the respondent/plaintiff or her counsel. It will not be out of place to observe that alleged service upon the respondent/plaintiff by way of pasting, besides being seriously doubtful, is otherwise violative of the provisions of Order V Rule 20, C.P.C. which deals with substitute service. **Resort to substitute service is to be made only when all efforts to effect the service in the ordinary manner are verified to have been failed or it is reported that party is deliberately avoiding to receive summons**, whereas no such verification of facts is available on record in the instant case.

Thus, in view of above discussion as well legal position, I am of the clear view that the findings of the learned appellate Court regarding ***point for determination No.1*** *was* not legal, valid and proper and same is accordingly reversed and answered as ***negative***.

9. While reverting to findings onto the ***point for determination no.2*** I would not hesitate in adding that in consequence to ***negative*** answer to ***first point for determination,*** the question of *limitation* becomes of less importance because of another settled principle of law that ***no one shall suffer for the act or omission of the Court.*** Reference is made to the case of *Habib Bank Ltd. v. Bashir Ahmed & Ors* 2019 SCMR 362 wherein said principle is affirmed as:-

> "5. … There is no denial of the fact that if the matter lingered on for a number of years, it was for no fault of the Respondent. It is apparent that the matter lingered on in Courts and in appellate proceedings for which the Respondent could not have been penalized. **It is settled law that an act of the Court shall not prejudice any of the parties**. …"
>
> (underlining is mine for emphasis)

Where the act or omission of Court in following the *prescribed* procedure is likely to prejudice the guaranteed right of ***due process*** and ***fair-trial*** then the *tilt* must always be in favour of the aggrieved party of such act or omission.

Needless to add that since ***'due process'*** or ***fair-trial*** is, *otherwise,* guaranteed fundamental right of the party which, *at all material times,* need to be *jealously* guarded by the Court (s). Needless to add that it is another well established principle of law that where foundation is shaky it *legally* can't hold the superstructure *even* if raised thereon. Guidance is taken from the case of Moulana ATTA-UR-REHMAN V. Al-Hajj Sardar Umer Farooq & others (PLD 2008 SC 663) wherein it is held as:

> "It is well settled that when the basic order is without lawful authority and *void ab initio,* then the entire superstructure raised thereon falls to the ground automatically as held in Yousuf Ali v. Muhammad Aslam Zia PLD 1958 SC 104."

10. Besides, it is matter of record that all relevant persons *did* submit their affidavit (s) whereby claiming on Oath that there had never been any proper service upon them and that on approach of the applicant they came to notice of dismissal of suit for ***non-prosecution.*** Such affidavits include statements on Oath of applicant; his counsel and even the counsel was holding office of counsel of applicant / plaintiff at relevant time. The same, being relevant, are reproduced hereunder:-

<u>Affidavit of Mr. Farooq H. Naik advocate:</u>

> 2) That the instant suit was filed by me on behalf of the plaintiff in December 1988, before honourable High Court of Sindh at Karachi and at that time I had my office on 22, Ghafoor Chambers, Abdullah Haroon Road, Karachi, wherefrom I shifted to my present address mentioned above in

1992. The plaintiff's address was mentioned in the title of the plaint.

3) That plaintiff had gone to Canada and settled over there since 1997. However on 29.12.2004 he came to my office and met me. He enquired from me about his case. I told him I will make enquiry from the honourable High Court and inform him about the date of hearing. **Anyhow I informed him that case has not been fixed for hearing since 1991 after the issues were settled by the court**. I deputed my associate Mr. Adnan Karim to make necessary enquiries from the High Court and requested the plaintiff to meet me tomorrow i.e. 30.10.2004 in my office.

4) That on 30.12.2004 plaintiff visited my office. I informed him that after enquiry and perusal of the file it was revealed that on account on increase of pecuniary jurisdiction of the civil courts, **the titled suit was transferred from the honourable High Court of Sindh at Karachi to District Judge Karachi South who vide order dated DJ(S) No.2463/96 dated 12.10.1996 transferred it to VI Senior Civil Judge Karachi South wherefrom it was transferred to many courts and ultimately it was transferred again to VI Senior Civil Judge Karachi South in January 1999**. During all this period **none of the party was served or intimated about the date of hearing as most of the time concerned court was lying vacant**.

5) That after the transfer of the case to this honourable Court the first date of hearing was on 6.3.1999 and on which **date this honourable court ordered that court motion notice be issued to the parties and their counsels by way of pasting and the matter was adjourned to 5.5.1999**.

6) That thereafter matter was adjourned from 5.5.1999 to 19.7.1999, 9.8.1999, 15.9.1999, 26.10.1999 and 3.11.1999. Notice by way of pasting was however issued on 30.10.1999.

7) That on 3.11.1999 no one was present. However this honourable court passed the order that court motion notice returned served as per bailiff report and adjourned the case to 8.11.1999 for recording the statement of bailiff.

8) That on 8.11.1999 again no one was present and on that date this honourable court recorded the statement of bailiff and adjourned the case for plaintiff's evidence.

9) That **on 26.11.1999 on account of absence of the plaintiff and his advocate this honourable court dismissed the case under order 17 rule 2 CPC**.

10) .....

11) **That the plaintiff is residing in Canada since 1997. He was neither property served by this court nor had knowledge /notice/intimation about the transfer of the case to this honourable court and /or about the date of hearing**."

Affidavit of Mr. Aqil Lodhi, advocate:

> 2) That I am in occupation of office at 22, Ghafoor Chambers, Abdullah Haroon Road, Karachi since 1992 till date after it was vacated by Mr. Farooq H. Naik advocate who shifted to his new office at Suite 5, third floor, Shafiq Plaza, Block A, Sarwar Shaheed Road, Karachi.
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> 3) **That neither any bailiff came to my office in the month of October or November 1999 enquiring about Mr. Naek advocate nor he pasted any notice outside my office regarding the titled case**. Had he done so I would have informed Mr. Naek advocate. **I not only meet Mr. Naek but also meet his associate Mr. Adnan Karim advocate regularly, as matter of fact I used to meet Mr. Naek after every week in central jail Karachi in connection with case of Mr. Asif Ali Zardari**."

These affidavits were filed by the reputable counsels who, *otherwise,* are not alleged to have any *direct* interest in the matter therefore, these affidavits were required to be given weight, particularly when there was no allegation of *past* negligence on part of the counsel for the applicant / plaintiff before the Original Court (transferor Court/this Court) nor it was / is the case that counsel for applicant / plaintiff despite *active* knowledge kept silent, particularly when dismissal of the suit of the plaintiff Under Order XI of the *Code legally* does not debar him from filing the *fresh suit* (subject to the law of limitation) so is evident from rule-4 of the Order-IX of the Code which reads as:-

> "4. Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) **bring a fresh suit**; or he **may apply for an order to set the dismissal aside**, and if he satisfies the Court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit".

11. The dismissal of suit of the plaintiff under order IX of the *Code* does not prejudice his right to file the *fresh suit* on same cause of action, if the same with reference to Rule-4 hence such dismissal, *prima facie,* does not operate as ***res judicata*** therefore, if non-appearance or *even* delay in resorting to either of the cases is backed by *categorical* reasons of staying abroad couple with non-service of *ultimate* agent / attorney of the plaintiff i.e **'counsel'** then the *tilt* must have been in favour of the applicant whose *valuable* rights are involved in the matter. Not only this but when such restoration *alone* was not likely to cause any prejudice to rival because restoration of suit and proving the controversies are completely *two* different things. This aspect was never appreciated by the two Court (s) below while dismissing the plea(s) of the applicant / plaintiff. I would make it clear that an order *even* passed under Order XVII Rule 2 of the Code would not cause any change in legal position that such *dismissal* would be presumed to be one under order IX of the *Code* unless otherwise expressly detailed in the order because the Order XVII rule 2 of the *Code* itself speaks that:

> "2. Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, **the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX** or make such other order as it thinks fit.

Needless to add that phrase ***'make such other order as it thinks fit'*** legally can't be confined to ***'dismissal'*** but includes an ***'adjournment'.***

12. Here, it is worth adding that the phrase ***'on any day to which the hearing of the suit is adjourned'*** is used in the Order

XVII rule 2 of the *Code* therefore the same needs to be given its weight else purpose thereof would fail. In the case of *Habibur Rehman v. Resham Bibi* 1991 MLD 71 this aspect was appreciated as:-

> "3. The condition precedent both under Rule 2, Order XVII and Rule 8, Order IX, C.P.C. is that the suit shall be dismissed for non-prosecution only when it is fixed for hearing and not otherwise. The term "hearing of the suit" received attention of the Courts in various cases. The consensus is that the word "hearing" means and includes taking of evidence, hearing of arguments or considering the questions relating to suit which enable the Judge to finally dispose of the case. It excludes the application of mind to interlocutory matters and their disposal. In Ghulam Sakeena's case PLD 1970 Lahore 412, Mr. Justice Nasim Hassan Shah, Judge followed the authority of Ghulam Farid Muhammad Latif's case PLD 1954 and observed that the expression "hearing of suit" should be construed in ordinary sense of the word and upon that it would mean recording of evidence, hearing of arguments and decision of questions relating to determination of the suit excluding disposal of the interlocutory matters…."

While interpreting so, it was concluded that any order of dismissal would be violative when on fateful day it was not fixed for ***hearing.***

13. Here, it would be conducive to refer *impugned* order of dismissal of the suit for **non-prosecution** which reads as:-

> "Case called. The plaintiff and his advocate called absent without intimation. The Defendant NO.3 is present in person while non (none) is present on behalf of the remaining defendants. The case is fixed today for plaintiff side but neither plaintiff is present nor any evidence of plaintiff is available. It is now 12:15 p.m. The suit of the Plaintiff is dismissed under Order XVII rule 2 C.P.C with no order as to costs."

The above order shows dismissal of the suit under Order XVII rule 2 CPC but without any further details hence it would *legally* be presumed that such dismissal was within meaning any of modes, provided by Order IX of the *Code.* The order further shows that matter was not fixed for ***'hearing'*** , as interpreted in referred laws

therefore, dismissal with reference to Order XVII rule 2 of the *Code* also appears to be violative. Such dismissal, at the most, could be presumed to be one under Rule-4 of the Order IX of the *Code.*

Such dismissal, as already discussed, since does not operate as dismissal by judgment nor prejudice the right of filing ***fresh suit*** regardless of such dismissal hence if absence on such date is shown to be any *reasonable* grounds then *tilt* would always be presumed in favour of the plaintiff. These had been the objectives because of which in said case of *M/s Sea Breeze Ltd.* this Court maintained the order of allowing revision, whereby order of dismissal of restoration application filed after more than one and half year, was set-aside and the order of restoration of suit was maintained regardless of question of *limitation.*

14. In consequences to what has been discussed above, I am of the clear view that allowing instant revision petition would advance the cause of justice whereby respective parties shall have full and fair opportunity of defending / proving their claim (s), involving valuable rights. Besides, matter pertains Defence Housing Authority hence authority was itself competent to examine the veracity of applicant's plea of fraud, however trial court would be justified to call DHA officials or direct them to conduct enquiry if any application is filed by any party. Accordingly, the revision petition is allowed. Both impugned order (s) of two Courts below are hereby *set-aside.* The matter is remanded back to learned trial Court for proceedings the matter further from the stage where it was at the time of its dismissal for non-prosecution.

15. Needless to add that since the matter is an *old* one therefore, the learned trial Court shall conclude trial within a period of three months; meanwhile no third party interest shall be created.

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