

ELECTION TRIBUNAL
HIGH COURT OF SINDH, KARACHI

Election Petition No. 25 of 2024

[Usman Ghani v. Election Commission of Pakistan & others]

Petitioner : Usman Ghani son of Yaqoob Hingoro through Mr. Tasadduq Nadeem, Advocate.

Respondent 1(i) & (ii) : Election Commission of Pakistan through Qazi Abdul Hameed, Deputy Attorney General for Pakistan alongwith M/s. Abdullah Hanjrah, Deputy Director (Law) and Sarmad Sarwar, Assistant Director (Law), ECP, Karachi.

Respondents 2-20 : Nemo.

Dates of hearing : 16-10-2024 & 05-11-2024.

Date of order : 22-11-2024.

ORDER

Adnan Iqbal Chaudhry J. - Notice of the petition was ordered on 13.06.2024, but cost was not deposited for issuing process. Therefore, on 01.07.2024, the petition was listed for non-prosecution. Since no one was present for the Petitioner, the petition was dismissed for non-prosecution.

2. On 10.07.2024, the Petitioner moved CMA No. 1559/2024 for restoring the petition. The application is through a fresh counsel. Learned counsel for the Petitioner submitted that even though the Petitioner had paid the professional fee of the previous counsel, he abandoned the case without notice to the Petitioner who was not aware that the petition was listed for non-prosecution on 01-07-2024. He further submitted that the Petitioner suspects that the previous counsel may have been won over by the returned candidate. For restoring the petition, he placed reliance on the case *Zulfiqar Ali Khan v. Election Tribunal, Gujranwala* (2001 YLR 336). On the other hand, to

oppose the restoration application the Law Officer of the ECP relied on the case of *Irshad Ahmed Shad v. Pervez Akhtar* (2013 CLC 254).

3. Heard learned counsel for the Petitioner and the Law Officer, ECP.

4. As per section 141 of the Election Act 2017, the Election Tribunal is vested with the powers of a civil court trying a suit under the CPC. That being so, the dismissal of the petition on 01.07.2024 for failing to deposit cost for issuing summons was essentially a dismissal under Order IX Rule 2 CPC. Against such dismissal, Order IX Rule 4 CPC permits an application for restoration, *albeit* subject to limitation, if the Petitioner satisfies the Court that there was 'sufficient cause' for not depositing the cost for process.

5. The Law Officer, ECP had relied on the case of *Irshad Ahmed Shad* to submit that the Petitioner was bound by the acts and omission of his counsel, and if the counsel was negligent then the Petitioner cannot escape the consequence by blaming his counsel. However, that *ratio* in *Irshad Ahmed Shad* was in relation to an application to condone delay under section 5 of the Limitation Act in making an application to restore the suit. Though the term 'sufficient cause' is used both in section 5 of the Limitation Act and in Order IX Rules 4 and 9 CPC, in the context of the former it is construed narrowly as limitation confers a valuable defense. On the other hand, the term 'sufficient cause' used in Order IX Rules 4 and 9 CPC is construed more liberally. A more detailed discussion on this aspect appears in *Abdullah Khan Usmani v. Securities & Exchange Commission of Pakistan* (2022 CLD 821). It is then settled law that 'sufficient cause' is something that may vary from case to case.

6. Here, the case is not that the Petitioner or his counsel were negligent in depositing cost for the process, but that the previous counsel abandoned the petition for reasons best known to him and without giving notice to the Petitioner of the date fixed by the

Tribunal. There is also no delay in making the application for restoration. In such circumstances, I am inclined to accept the explanation offered by the Petitioner as sufficient cause for not being able to deposit cost for process within time. Therefore, the application is allowed and the petition is restored along with pending applications. One weeks' time is allowed for issuing process.

JUDGE

Karachi
Dated: 22-11-2024