

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

Suit 487 of 2022
Suit 1907 of 2022

Date	Order with signature of Judge(s)
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For hearing of CMA No.12640/2024

26.11.2024

Mr. Imran Hussain Qadir, advocate for the plaintiffs
Ms. Rehmat un Nisa, advocate for defendant
Mr. Muhammad Arif, advocate for defendant
Mr. Muhammad Kashif, advocate for defendant

The suit was filed in 2022 and remained listed for orders as to maintainability. On 25.01.2024, a caution was recorded and the plaintiff directed to address the issue / proceed with the case. On 16.04.2024, while recording non-compliance and un-representation, the suit was dismissed for non-prosecution. CMA 6362 was filed seeking restoration, however, the same was also dismissed for non-prosecution on 22.08.2024. Present application, CMA 12640 of 2024, seeks restoration of the application that sought restoration of the suit.

The arguments articulated in support of the application are as follows: the suit was originally being proceeded with by an earlier counsel who remained absent; new counsel engaged after suit dismissed; however, he also could not attend the hearing/s due to rush of work and being busy.

On 16.04.2024 it was the present suit that was fixed for hearing¹ and the order passed aptly encapsulated the reasons relied upon. The plaintiff's counsel has been unable to demonstrate that the said order could not have been rendered on the rationale cited². The accusations against an earlier counsel are convenient and uncorroborated and no evidence of any remedial action in such regard is demonstrated before this Court. The record cited supra *prima facie* demonstrates the disinterest of the plaintiff in the present proceedings. No reasonable justification for the absence of the respective learned counsel has been articulated.

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

¹ Per *Mian Saqib Nisar J. in Rana Tanveer Khan vs. Naseerudin* reported as 2015 SCMR 1401.

² *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.

the persistent absence and no case has been made out to condone the default. The Supreme Court has observed in *Nadeem H Shaikh*³ 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.

Listed application is hereby dismissed with cost of Rs.5,000/-; to be deposited in the High Court Clinic within one week.

Office is instructed to place copy of this order in connected matter.

Judge

Amjad

³ Per Qazi Muhammad Amin Ahmed J. in *SECP vs. Nadeem H Shaikh & Others (Criminal Appeal 518 of 2020)*; Order dated 27.10.2020.