

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.663 of 2003

Date	Order with signature of Judge(s)
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1. For orders on CMA No.17297/2024.
2. For orders on CMA No.17298/2024.

27.11.2024

Mr. Deepak Kumar, advocate for the plaintiff.
Syed Shahid Mushtaq, advocate for the defendants No.1 to 8.

1. Urgency granted.
2. This application seeks recall of order dated 24..09.2024, which reads as follows:

“24.09.2024

Syed Shahid Mushtaq, advocate for the defendants No.1 to 8.

None present for the plaintiff without intimation or justification despite a fixed date. Same appears to be the case on the last date of hearing. In view hereof suit is dismissed for non-prosecution.”

The learned counsel initially stated that on the aforesaid date the board was discharged, however, he found out later that the impugned order had been passed. Upon being confronted as to the veracity / corroboration of the said statement, he recanted his argument.

It was next stated that while the counsel himself had not reached Court; but that the plaintiff was present. This presence of the plaintiff at the hearing could also not be corroborated and such an assertion is *prima facie* alien to the application / affidavit under consideration.

Perusal of the application / counter affidavit demonstrates that it is devoid of any grounds upon which restoration could be predicated. Furthermore, no affidavit of the plaintiff accompanies the application.

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 remains unjustified. 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 and no case has been made out to condone the default. The Supreme Court has observed in *Nadeem H Shaikh*¹ 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.

¹ Per Qazi Muhammad Amin Ahmed J. in *SECP vs. Nadeem H Shaikh & Others (Criminal Appeal 518 of 2020)*; Order dated 27.10.2020.

It is the considered view of this Court that no case has been set forth by the applicant / counsel, therefore, the listed application is dismissed in *limine*.

Judge

Khuhro/PA