

IN THE HIGH COURT OF SINDH AT KARACHI

R.A. No.120 of 2016

Tahir Ahmed  
Versus  
Shell Pak Limited & others

Date of hearing: 06.12.2017

Applicant: Through Mr. Suresh Kumar Advocate.

Respondents No.1: Through Mr. Rajendar Kumar Chhabria Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Applicant in this Revision Application has challenged the order of II-Additional District Judge Thatta and the order passed by Senior Civil Judge Thatta in Civil Appeal No.47 of 2014 and Suit No.27 of 2009 respectively whereby an application under order IX rule 9 CPC was dismissed and such order was maintained in appeal.

Learned counsel for the applicant submits that in support of application for the restoration of the suit applicant has filed medical certificates of his father and the record shows that the certificates were produced w.e.f. 15.08.2013. The medical certificate of 20.09.2013 was also considered by the trial Court however it is claimed that such medical certificate was ignored by the trial Court as it was not of the relevant date when the suit was dismissed two days before i.e. 18.09.2013.

Counsel for respondent however has supported the orders impugned herein and contended that no interference is required as the applicant had remained absent on the previous dates as well.

I have heard the learned counsels and perused the material available on record.

The trial Court has only confined its discussion and deliberation to a medical certificate f dated 20.09.2013 however there is no reasonable

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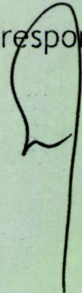
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justification to ignore the sickness of the father of the applicant w.e.f. 15.08.2013 which is substantiated by medical certificates. He was stated to be continuously sick since August 2013 and was at one point of time hospitalized at Karachi. All along he was under treatment of different doctors at Karachi. The trial Court and the appellate Court have not given justified reasons in discarding the affidavit of the counsel as well as of the plaintiff/applicant which is also supported by medical certificates.

Certainly applicant was not in contact with his counsel on account of sickness of the father and may not have been informed of the date of dismissal. What is material to be seen by the trial Court and the appellate Court was whether there was sufficient material and evidence provided whereby applicant has shown justification to remain absent on the crucial date when the suit was dismissed, The medical certificate of 20.09.2013 out rightly cannot be ignored on the ground that it is not of relevant date. Of course the father of the applicant was sick and was taken to a hospital at Karachi. It may have taken them a few days to decide and then reach Karachi, which presumption cannot be ignored altogether. I do not concur with the views of the trial Court and appellate Court insofar as discarding medical certificates of doctors however considering the nature of the case as it was filed for settlement of accounts the revision application is allowed subject to payment of cost of Rs.10,000/- to be deposited with the High Court Clinic within ten days from today. The suit is restored; the parties in particular applicant are directed to be vigilant and the suit be disposed of preferable within four months from the date of this order. Insofar an issue of maintainability of the suit is concerned, as raised by the respondent's counsel, the trial Court shall decide it first.

  
Judge