

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Date	Order with signature of the Judge
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Present:
Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Muhammad Osman Ali Hadi.

HCA No.149 of 2024

Asif Inam & others	Appellants
	Vs.	
Khalid Inam & another	Respondents.

27.03.2025.

Ms. Heer Memon, advocate for Appellants.
Mr. Muhammad Noman Jamali, advocate for respondents No.1& 2.
Mr. Zeeshan Abdullah, advocate has filed power on behalf of respondent No.2.

ORDER
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MUHAMMAD IQBAL KALHORO J: In suit No.275/2023 pending before learned Single Judge of this court, when appellants/plaintiffs were not proceeding with the trial, the respondent/defendant’s counsel moved various applications seeking urgent hearing. In response, the suit was fixed for trial but learned counsel for appellants/plaintiffs always sought time on one pretext or other. Finally, on 05.04.2024 when the suit was posted in the court for proceedings, advocate for appellants/plaintiffs was absent, some other advocate held brief on his behalf and sought adjournment. Learned Single Judge proceeded to decline the request, recalled the interim order operating in the suit, and dismissed CMA No.3619/2023 for stay in non-prosecution. Consequently application CMA No.3404/2023 moved by the respondents/ defendants u/o 39 rule (4) CPC was disposed of. The same order has been challenged in this appeal.

2. We have heard the parties. Learned counsel for appellants/plaintiffs has contended that this appeal may be converted into an application for restoration of the application dismissed in non-prosecution or atleast the case may be remanded with the interim order intact enabling appellants/plaintiffs to proceed with the suit on merits or argue the application for stay. These proposals have been opposed by learned counsel for respondents.

3. We are of the view that appellants should have either filed application u/o 9 rule 9 CPC for restoration of the application dismissed in non-prosecution, or filed a fresh application for stay instead of filing appeal before this court. The stay application was not decided on merits and the conduct of the appellants /plaintiff’s counsel, reflected in the impugned order, shows that he was given various opportunities by the learned Single Judge to proceed with the matter or at the

minimum argue application u/o 39 rule 1 & 2 CPC but he always succeeded in avoiding the same. We, therefore, find no illegality in the impugned order dismissing stay application in non-prosecution. However, in order to enable the appellants to present afresh their case to the extent of stay application before the trial court, we allow them to move a fresh application for stay before learned trial court for a consideration, if so advised. We direct the trial court that if such application is filed by the appellants, the same shall be decided within ten days of its filing with notice to all the parties.

The Appeal stands disposed of in the above terms alongwith pending application.

JUDGE

JUDGE

A.K