

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-880 of 2025

'Sikandar Khan vs. Munawar Khan and others'

Petitioner : Through Mian Ashfaq Ahmed Advocate

Respondent No. 1 : Mr. Munawar Khan in person

Respondent Nos. 2 to 7 : Not Present

Date of Hearing : 21.04.2026

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- Aggrieved by the Order dated 02.09.2024 passed by the learned IX Additional District & Sessions Judge, Karachi West, in Civil Revision No. 59 of 2023 [**impugned Order**], the instant petition has been preferred, whereby petitioner's suit, which was dismissed for non-prosecution, was not allowed to be restored.

2. Heard and perused.

3. Succinct facts of the issue are that the Petitioner and the Respondents are spouses *inter se*, being children of late Raheem Khan son of Gulab Khan [**deceased father**], who passed away on 24.08.1983, whereas their mother, Mst. Syed Raisa Bano, widow of Raheem Khan [**deceased mother**], also passed away on 02.02.1985 [deceased mother and father are collectively referred to as '**deceased parents**'].

4. Both the deceased parents left behind eight legal heirs (petitioner and Respondents No. 1 to 7). The deceased father left behind immovable property, being House No.1728/01 admeasuring 120 square yards, constructed ground plus three floors, residential and commercial, situated at Arab Mohallah, Baldia Town, Karachi. The deceased mother left behind movable articles, including gold ornaments, silver articles, household items and other belongings.

5. The dispute in the instant proceedings pertains to the estate left behind by the deceased parents of the parties. The Petitioner claims that he lived with the Respondents in the inherited house until 2010, after which disputes arose, and he left along with his family and started living separately. He further claims that all the movable articles left by the deceased mother are kept and held by the Respondents, whereas the inherited house is also in their possession and enjoyment. Attempts were made to bring about a family settlement for the distribution of the estate of the deceased, but without any success.

6. The Petitioner filed Civil Suit No.1151 of 2021 for partition and administration before the learned Senior Civil Judge-XVII, Karachi West, it was contested by the Respondents, wherein the legal status of the Petitioner and his entitlement to share in the inherited properties were not disputed. Issues were framed, and the Petitioner filed his

Affidavit-in-evidence, but thereafter did not appear in person on the dates fixed for recording of evidence. On 14.12.2022, an associate of his counsel marked his attendance, yet the suit was dismissed for non-prosecution. Petitioner's application under Order IX Rule 9 read with Section 151 CPC, for restoration of the suit was also dismissed vide Order dated 31.07.2023, whereas his Civil Revision Application No.59 of 2023 was also rejected vide Order dated 02.09.2024 by the learned IX Additional District & Sessions Judge, Karachi West on the premise that the Petitioner should have filed a Civil Miscellaneous Appeal under Order XLIII Rule 1(c) CPC. The Petitioner prays for a decision of this inheritance case on the merits, with a fair opportunity to all parties.

7. The petitioner claims that his absence was due to his serious illness and subsequent heart attack and angioplasty. He also claims to be a diabetic patient and was advised by his doctor to remain in complete bed rest and avoid unnecessary movement. According to him, although such facts were conveyed to the trial Court through his counsel, the Court proceeded to reject his application.

8. I have carefully examined the manner in which the Courts below dealt with the matter. The suit filed by the Petitioner was for partition and administration of inherited property. The Respondents, in their written statement before the trial court, did not dispute the Petitioner's status as a legal heir or his entitlement to a share in the inherited properties. This is a matter of significant importance because it means that there was no genuine dispute about the right of the Petitioner. The only question was of distribution and partition, which remained to be worked out. In such circumstances, the dismissal of the suit for non-prosecution has the effect of depriving a legal heir of his lawful share in the estate of his parents, not because his claim was found to be without merit but because of a procedural default. It is true that the trial Court gave multiple opportunities to the plaintiff to proceed with the evidence and that the plaintiff failed to avail those opportunities. It is also true that on 14.12.2022, neither the plaintiff nor his counsel was present. However, the explanation offered by the Petitioner through his counsel, both before the trial Court and the revisional Court, was that he was seriously ill, having suffered a heart attack and being a diabetic patient requiring bed rest. This explanation was rejected on the ground that no documentary evidence of illness was produced. The suit is not of an adversarial character in the conventional sense but is essentially a suit for working out the shares of all the heirs, including the Respondents, in the estate of their common parents. He claims that his absence was due to his serious illness and subsequent heart attack and angioplasty. He also claims to be a diabetic patient and was advised by his doctor to remain in complete bed rest and avoid unnecessary movement. In a situation of this nature, the interest of all parties, including the Respondents, lies in the matter being decided on the merits rather than being dismissed on a technicality.

9. The Honourable Supreme Court of Pakistan in *'Province of Punjab and others v. Col. Abid Majeed'* (1997 SCMR 1692) held that **"Code of Civil Procedure was enacted for regulating the procedure before Civil Courts. The provisions of C.P.C. are mainly the rules of procedure and all the procedural law should be subservient to cause of justice, they neither limit nor control the power of Court to pass an order/judgment or decree which is necessary in the cause of justice."**
10. Again in *'Baber Hussain Shah and others v. Mujeeb Ahmed Khan'* (2012 SCMR 1235), the Honourable Supreme Court held that **"concept of fair trial and due process has always been the golden principle of administration of justice but after incorporating of Article 10-A of the Constitution, it had become more important that due process should be adopted for conducting a fair trial and an order passed in violation of due process might be considered to be void."**
11. In *'Mst. Jahan Ara v. Muhammad Zubair'* (2012 CLC 1630), it was held that **"cherished goal of law is that matters to be decided on merits so that litigants are not deprived of their valuable rights in wake of their technically knock out."**
12. In *'Muhammad Farooq v. Engineer and Chief G.H.Q'* (2012 PLC 1335), the dicta laid down was that **"technicalities should not hamper the cause of justice and may not be used to create hurdles in the way of administration of substantial justice."**
13. In *'Varan Tours v. Province of Punjab'* (2011 YLR 5 Lahore), the Court held that **"technicalities should be avoided in administration of justice as basic duty of Court being to administer justice on basis of evidence led by the parties according to the facts and circumstances of each and every case."**
14. The general policy of law leans in favour of adjudication of disputes on merits, and dismissal in default should serve as an exception to this general rule of law, as can be seen from the cases of *'Muhammad Naveed Hussain v. Small Business Finance Corporation/ SME Bank Ltd. and 2 others'* (2006 CLD 1486), *'Shahzaman and another v. Muhammad Aslam and 3 others'* (PLD 1985 Peshawar 35), *'Muhammad Khan through Legal Heirs and others v. Shabarati'* (PLD 1995 Karachi 267), *'Sharafat Ali v. Muhammad Boota and another'* (1985 CLC 1063) and *'Abdul Aleem v. General Public and 5 others'* (1999 CLC 323).
15. In *'Giyani Khan and others v. Sher Ali and 3 others'* (2005 CLC 686), it was concluded that the provisions of procedure are meant for the sake of administration of justice and such provisions should be subservient to the cause of Justice. Such provisions do not control the powers of the Court for passing an order necessary for doing complete justice. There are several circumstances which lend credibility to the Petitioner's claim of illness. First, the Petitioner's affidavit in evidence had already been filed, which shows that he was engaged and prosecuting the suit. Second, the Petitioner, through his counsel, did convey his illness to the trial Court. Third, the Petitioner filed

an application under Order IX Rule 9 CPC within time. Fourth, the Respondents, being the Petitioner's own siblings, were themselves aware of his poor health as stated in the petition. The Trial Court, and thereafter the Revisional Court, adopted an unduly rigid approach in insisting upon documentary proof of illness without considering the surrounding circumstances.

16. The objection regarding Civil Miscellaneous Appeal under Order XLIII Rule 1(c) CPC rather than a Civil Revision, was also technical in nature, which should not be allowed to stand in the way of justice in the circumstances of this case. Where the ends of justice require intervention, the Court should not allow procedural technicalities to defeat substantive rights. Where the refusal to restore a suit results in the deprivation of a legal right and the circumstances disclose a plausible cause for non-appearance, the Court should lean in favour of restoring the suit so that the matter may be decided on the merits. The principle is well established that Courts of law are instituted to deliver justice on merits and not to bury the claims of litigants under the weight of procedural defaults, particularly where those defaults are explained and where the substantive rights of the party are clear and uncontested. A litigant who claims a share in the estate of his deceased parents and whose status as a legal heir is admitted by the other side ought not to be shut out from the Court of law on account of illness-related absence, especially where the illness is of a serious nature, such as a heart attack and diabetes requiring hospitalisation and rest.

17. The learned Revisional Court's finding that the Petitioner showed callous indolence is not supported by the overall picture that emerges from the record. The Petitioner filed the suit, served the Respondents, obtained their written statement, framed issues, filed his own affidavit-in-evidence, and only thereafter faced difficulty in appearing due to illness. This sequence of events does not bear the hallmark of a person who was indifferent to his case. The absence on 14.12.2022 is better understood as a consequence of genuine ill health rather than deliberate default. The learned Revisional Court granting liberty to the Petitioner to avail proper remedy in accordance with law was itself an acknowledgement that the matter deserved to be addressed on its merits. However, the effect of the impugned orders taken together is that the Petitioner is left without any effective remedy in his claim in the suit for administration.

18. The jurisdiction under Article 199 of the Constitution is wide enough to correct , jurisdictional errors and errors going to the root of the matter, particularly where a party has been denied a fair opportunity to present its case and where the result is a gross failure of justice. The jurisdiction is not limited to cases where a subordinate Court acts without jurisdiction in the narrow sense but extends to situations where the Court has acted in a manner that is patently illegal, arbitrary or violates the principles of natural justice. Once issues were framed in a suit for administration and the Court entered upon recording the evidence, the matter should have been taken to its logical end, and resort should not be made to its disposal on merits. There may be some short fall and delay on the part of plaintiff/applicant to adduce the evidence but keeping in mind the golden

principle of administration of justice laid down by our Superior Courts read with Article 10-A of the Constitution of Pakistan discussed *supra*, it is supreme duty of the Court to provide fair opportunity to the parties approached the Court for redressal of their grievances and the Courts for the sake of larger administration of justice to safeguard the valuable rights of the parties on merits. In view of the foregoing, this Court is satisfied that the impugned Orders by both Courts require interference considering the totality of the circumstances, the nature of the suit, the undisputed heirship of the Petitioner, and the explanation for his non-appearance.

19. Accordingly, both the impugned Orders are set aside and the Civil Suit No.1151 of 2021 is restored to its original position, with directions to the learned trial Court to expeditiously proceed with recording of evidence of both parties, without allowing any unnecessary adjournments to either side, to conclude the trial and pass final Judgment within a period of 60 working days from the date of receipt of this Judgment, with a copy of the judgement to be filed with the MIT of this Court in compliance. The office is directed to transmit a copy of this order to the learned trial Court.

The instant petition was allowed by my short Order dated 21.04.2026, and these are the reasons for the same.

J U D G E