IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-4918 of 2024.

Before:-
Mr. Justice Riazat Ali Sahar,
Mr. Justice Ali Haider 'Ada'

Petitioner:
Abdul Mannan Abbasi, *through* Mr. Muhammad Mukhtar Khan, Advocate.

VERSUS

Respondents:
Essity Pakistan and Others.

Mr. Adeel Sahito, Advocate for Respondent No.1.
Mr. Zohaib Sarki, Additional Advocate General, Sindh.

Date of Hearing: 27.10.2026.
Date of Decision: 27.10.2026.
Date of Reasons: 29.10.2026.

JUDGEMENT

Ali Haider 'Ada' J.- The case of the petitioner is that he was employed by Essity Pakistan, an establishment falling within the purview of the Sindh Industrial Relations Act, 2013, where he was initially appointed on probation and subsequently confirmed in service.

2. On 15.03.2021, while proceeding to attend his duty, the petitioner apparently met with a motorcycle accident and also suffered a heart attack. The said circumstances were communicated to the employer through WhatsApp. Despite being informed of his medical condition, the petitioner was served with a show-cause notice. Owing to his illness, he claims that he was unable to participate in the proceedings, which ultimately culminated in the termination of his services.

3. The petitioner challenged his termination before the Sindh Labour Court No. II, Karachi (the trial Court). Upon issuance of notice, learned counsel for the respondent-employer appeared and

moved an application seeking permission to produce certain documents, particularly those annexed as Annexures B and B-1. Although the application was allowed, the requisite documents were not produced despite directions. Subsequently, vide order dated 25.11.2021, the trial Court dismissed the petitioner's case for non-prosecution.

4. Thereafter, the petitioner filed an application for restoration of his case before the trial Court, contending that his counsel had not informed him about the dismissal of the proceedings. He further asserted that he had lodged a complaint against the said counsel before the Disciplinary Committee of the Sindh Bar Council. However, the restoration application was dismissed vide order dated 02.11.2023, primarily on the ground of limitation, as it had not been filed within the prescribed period of thirty days. The petitioner challenged the said order before the Sindh Labour Appellate Tribunal, Karachi, but his appeal was also dismissed on the ground of limitation.

5. Learned counsel for the petitioner primarily contended that the dismissal of the original proceedings for non-prosecution was unjustified, particularly when the petitioner's personal appearance was not required at the relevant stage. He further argues that Article 181 of the Limitation Act, 1908, was applicable to the restoration application, rather than Article 163 thereof. According to him, the trial Court and the appellate Tribunal failed to properly appreciate the applicable provisions of law and the circumstances explaining the delay, thereby rendering the impugned orders unsustainable. He, therefore, sought setting aside of the impugned orders passed by the fora below.

6. Conversely, learned counsel for the respondent-employer categorically submitted that the petitioner remained negligent and failed to pursue his remedy diligently, having filed the restoration application after a delay of approximately one year from the

dismissal of the original proceedings, without furnishing any plausible explanation for such delay. He further contended that the petitioner cannot claim any special indulgence merely because he subsequently sought to revive the proceedings. Accordingly, he maintained that the orders passed by the fora below are lawful and do not warrant interference.

7. Learned Additional Advocate General, Sindh, also supported the impugned orders and opposed the petition on the ground of limitation.

8. Heard learned counsel for the parties and perused the material available on record.

9. At the outset, it is necessary to examine the averments made by the petitioner in the grievance petition filed before the learned Trial Court. In the relevant paragraph, the petitioner relied upon documents marked as Annexures B and B-1, asserting that Annexure B constituted medical evidence relating to the accident and heart attack allegedly suffered by him, whereas Annexure B-1 pertained to the information conveyed to his employer. The employer subsequently moved an application before the learned Trial Court seeking copies of the said documents, which was allowed, with a direction to the petitioner to furnish the same. However, owing to the petitioner's failure to produce the required documents, the proceedings were dismissed for non-prosecution. The subsequent application for restoration was dismissed as time-barred, and the appellate Court upheld the said order.

10. Turning to the legal aspect of the matter, **Order VII Rule 18 of the Code of Civil Procedure** provides that a document which ought to have been produced with the plaint, but was not so produced or included in the list of documents, cannot be received in evidence on behalf of the plaintiff at the hearing of the suit without the leave of the Court. For ready reference, the relevant provision is reproduced as under:

> ***18. Inadmissibility of document not produced when plaint filed.*** *– (1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the pliant, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.*
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> *(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.*

11. The consequence of non-compliance was the dismissal of the matter for non-prosecution, although the proceedings were at the stage of supplying the required documents to the opposite party and filing of the written statement. Upon further examination of the relevant legal provisions, **Order XI Rule 21 of the Code of Civil Procedure** also assumes significance in determining the consequences of non-compliance with an order for discovery or inspection of documents. For ready reference, the relevant provision is reproduced as under:

> ***21. Non-compliance with order for discovery****.– Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly*

12. Such action must, however, be taken in accordance with the procedure prescribed under **Order XI CPC**, which specifically governs the discovery, production and inspection of documents and provides the legal consequences of non-compliance with the Court's orders in this regard. The same are reproduced as under:-

> ***[12. Application for discovery of documents****.– (1) Any party may apply to the Court for an order directing any other party to a suit to make discovery on oath of the documents which are or have been in his possession or power, relating to a matter in issue in the suit.*

(2) On hearing such application, the Court may either refuse or adjourn the same, if it is satisfied that such discovery is not necessary or not necessary at that stage of the suit, or may, after being satisfied as to the validity of the prayer made, direct the other party to make the discovery:

Provided that the discovery shall not be ordered when and so far as the Court is of opinion that it is not necessary either for disposing the suit or for saving costs.]

13. Affidavit of documents.– *The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.*

14. Production of documents.– *It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.*

15. Inspection of documents referred to in pleadings or affidavits.– *Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying withsuch notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.*

16. Notice to produce*.– Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.*

17. Time for inspection when notice given.– *The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.*

18. Order for inspection.– *(1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.*

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

19 Verified copies.– *(1) Where inspection of any business books is applied for the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.*

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

20. Premature discovery.– *Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or*

inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

13. **Rules 12 to 20 of Order XI CPC** prescribe the procedure for discovery, production and inspection of documents, whereas **Rule 21** provides the consequences of non-compliance with an order for discovery or inspection. In the present case, neither the prescribed procedure was adopted by the learned Trial Court nor does the matter appear to fall within the scope of the said exercise. Consequently, the dismissal of the proceedings for non-prosecution, without following the procedure prescribed under Order XI CPC, was not justified under the law.

14. Further, **Order XIII Rules 1 and 2 CPC** also prescribe the procedure regarding the production of documents and the consequences of their non-production. Thus, even if the required documents were in the petitioner's possession, the opposite party could avail the remedy provided under the said provisions of law. For ready reference, the relevant provisions are reproduced as under:

> ***1. Documentary evidence to be produced at first hearing****.– (1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.*
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> *(2) The Court shall receive the documents so produced: Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.*
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> *[(3) On production of documents under this rule, the Court may call upon the parties to admit or deny the documents produced in the Court and record their admission or, as the case may be, denial.]*
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> ***2. Effect of non-production of documents.–*** *No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.*

15. The principal question that arises is whether the learned Trial Court was empowered to exercise the powers of a Civil Court and apply the provisions of the Code of Civil Procedure. The answer is in the affirmative, in view of **Section 46 of the Sindh Industrial Relations Act, 2013**, which provides the requisite statutory authority. For ready reference, the relevant provision is reproduced as under:

> ***46. Procedure and powers of Labour Court.***– *(1) -----*
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> *(2) A Labour Court shall, for the purpose of adjudicating and determining any industrial dispute, be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure, 1908 (V of 1908), including the powers of –*
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> *(a) enforcing the attendance of any person and examining him on oath;*
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> *(b) compelling the production of documents and material objects; and*
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> *(c) issuing commissions for the examination of witnesses or documents.*

16. The question of limitation also requires careful examination. In this regard, Article 163 of the Limitation Act prescribes a period of thirty days for filing an application for restoration. However, the applicability of the said provision and the grounds justifying restoration must be examined in the light of the relevant facts and circumstances.

17. Article 163 of the Limitation Act applies to an application for setting aside a dismissal for default of appearance or for failure to pay the costs of service of process or to furnish security for costs. In the present case, the facts and circumstances do not fall within the scope of the said provision; therefore, its prescribed period of limitation is not attracted to the petitioner's application for restoration.

18. The stage at which the matter was fixed is also material. Once the case was fixed for appearance, the employer, upon entering

appearance, was required to submit its written statement to place its defence on record. If the petitioner failed to produce the requisite documents, the mechanism provided under Order VII Rule 18 CPC was available to address that omission. Therefore, where the matter was fixed for procedural compliance, particularly for filing the written statement by the opposite party, the petitioner's personal appearance was not necessarily essential.

19. As regards limitation, although the Limitation Act, 1908 prescribes a period of thirty days for an application seeking restoration in cases covered by the relevant provision, the applicability of the residuary Article 181 must also be examined in the light of the nature of the proceedings and the relief sought. In **Abdul Rehman and another v. Syed Jaffar Hussain Razvi (deceased) through LRs (2026 SCMR 1316),** the Honourable Supreme Court addressed the applicability of the residuary limitation provision and the principle that a litigant should not suffer on account of an act of the Court. Accordingly, where Article 181 applies, the prescribed period is three years, and the restoration application cannot be rejected as time-barred merely by applying the thirty-day period without first determining the applicable provision.

20. Keeping in view the foregoing reasons and discussion, the instant Constitutional Petition is partly allowed. The impugned orders dated 25.11.2021 and 02.11.2023 passed by the learned Trial Court in Case No. 70 of 2021, as well as the judgment dated 27.08.2024 rendered by the Sindh Labour Appellate Tribunal, Karachi, in Appeal No. KAR-200 of 2023, are hereby set aside. The matter is remanded to the learned Trial Court, and Case No. 70 of 2021 is restored to its original position. The learned Trial Court is directed to conclude the proceedings on merits, in accordance with law, within sixty days, without granting undue adjournments. These are the detailed reasons for the short order dated 27.10.2026.

JUDGE

JUDGE