

ORDER SHEET  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD.

R.A. No.16 of 1997

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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For orders on MA 999/2014.

02.09.2014.

Mr. Sartar Iqbal Panhwar Advocate for the applicant

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Learned counsel is present alongwith Muhammad Zakir legal heir No.5 of deceased applicant is present.

Unfortunate history of this case is that the deceased filed Civil Suit No.23 of 1993 against the respondents No.1 & 2 and subsequently at revision stage, respondents No.3 & 4 were impleaded as they filed an application U/O 1 Rule 10 CPC. However original suit No.23/1993 was dismissed for non prosecution by order dated 09.02.1995, which was followed by an application U/O IX Rule 9 CPC, which was also dismissed by order dated 16.08.1995. Against such order, the applicant preferred Civil Appeal No.40/1995 before the court of District Judge Sanghar, which was transferred to learned Additional District Shahdadpur and was re numbered as Civil Appeal No.11/1996. This civil Appeal No.11/1996 was dismissed for non-prosecution on 10.09.1996 and therefore, another application U/O XLI rule 19 CPC was filed and at the time of hearing of this application, learned appellate court disposed of such application and dismissed Civil Appeal on merits by order dated 03.11.1996. Thereafter this Revision Application was preferred which was filed in this court on 02.02.1997.

Learned counsel for the respondents is not attending this court despite intimation notices, however, page 97 of the file shows that the respondent No.3 has withdrawn the power of his counsel who was appearing on behalf of the respondent No.3. Subsequently another counsel filed his power on behalf of the respondents No.1,3 & 4. However, said counsel is also not appearing in this case.

Be that as it may, despite of the fact that considerable time has lapsed, fact remains that the adjudication has not taken place on merits. Keeping in view the loss of time and without touching merits of the case, impugned order is set-aside and matter is remanded to the learned trial court to decide suit No.23/1993 re Kifayatullah Vs. Tharo and another,

subject to payment of cost of Rs.50,000/-. The cost shall be deposited by the applicants in the court of Senior Civil Judge Shahdadpur before issuance of notices to the defendants. The defendants No.1 & 2 shall be entitled for cost of Rs.50,000/- as originally suit was filed against them and they had appeared before the trial court as well as appellate court. The respondents /defendants No.3 & 4 who were joined before this court on their application U/O 1 Rule 10 CPC shall not be entitled to claim any share in the cost.

The applicant No.5 Muhammad Zakir present in person seeks 30 days time to deposit the cost before the Nazir of Senior Civil Judge Shahdadpur. If the cost is not deposited within 30 days, the suit shall be deemed to have been dismissed and this revision application shall also be deemed to be dismissed. Once the cost is deposited within 30 days, notices may be issued to the respondents/ defendants and the trial court shall ensure that no exparte Judgment will be allowed to be announced against the respondents/ defendants and all possible efforts shall be taken for their service. In case the applicant / plaintiff failed to get the defendants served or attempted to get the suit proceeded exparte, the suit shall be deemed to be dismissed.

With the above observation, this Revision Application is disposed of.

JUDGE

A.K