

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

R.A.No.207 of 1998

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| DATE | JUDGMENT WITH SIGNATURE OF JUDGE |
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1. For orders on CMA 633/14
2. For orders on CMA 442/14
3. For hearing of CMA 850/11

Mr. Rustam Khan Talpur Advocate for the applicant
Mr. Saeeduddin Siddiqui Advocate for respondent No.1.

Date of hearing: 18.09.2014.

Date of Judgment 26 .09.2014.

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NAZAR AKBAR, J:- Through CMA No.850/2011, the respondent No.1 seeks restoration of CMA Nos.100 and 101 of 2006, which were dismissed by order dated 21.04.2006, which is reproduced below:-

21.04.2006.

Mr. Abdul Rashid Mughal advocate holding brief for Mr. Ghulam Muhammad Mughal, advocate for respondents requests for adjournment.

According to file, the Revision was disposed of by detailed order dated 06.05.05 and thereafter these applications CMA No.100/2006 U/s 151 CPC and CMA No.101/2006 U/s 12(2) CPC have been filed which were fixed on 17.02.2006 then on 17.04.2006 and on both the dates, adjournment was requested.

Today is the same position. It is apparent that this is delaying tactics and by these applications, applicant wanted to nullify the effect of the Judgment passed in the revision. In the circumstances, both the CMAs No.100 and 101 of 2006 are dismissed.

2. I have examined the contents of this application U/O IX Rule 13 CPC and U/O 41 Rule 19 CPC.

3. The order clearly reflects that the CMAs were not dismissed on account of absence of the counsel for the respondents and therefore, provisions of Order IX Rule 13 CPC regarding setting aside decree ex parte against defendants/respondents were totally misplaced. Simultaneously, provision of Order XLI Rule 19 CPC, which deal with re admission of appeal dismissed for default too is not attracted in the present case. Besides the fact that it was dismissed in presence of the counsel for the respondents or at least in presence of associate of their counsel, therefore it is misconceived to consider that the order dated 21.4.2006 as an ex parte decree against the respondent whose applications were dismissed on the fateful day. Nor it can be termed as dismissed for default since their counsel was present in Court and he was not prevented from appearing in Court on 21.4.2006.

4. The respondents have approached this court for restoration of the said applications on **23.07.2011** and the dismissal order of their said applications is dated **21.04.2006**. The time between the date of filing of application for restoration and date of dismissal of his application is **05 years 03 months and 02 days**. The applicant has not explained the reason for the delay in filing the restoration application after more than five years. Not only that the applicant in the restoration application and support affidavit has not even mentioned the date of dismissal of his application and the reason as to why the same should be restored. In para 4 of his affidavit, the

reason given is that his previous counsel on 21.04.2006 did not appear and he was not informed about the consequences of the dismissal order. On the face of it, this is wrong statement as order of dismissal dated 21.04.2006 clearly mentions the presence of counsel for the respondent in court. Be that as it may, the applicant atleast should have disclosed the date when he came to know about the dismissal order dated 21.04.2006 and what had prevented him from approaching this court until 27.3.2011. He has not even filed an application for condonation of delay despite of the fact that he has filed application for restoration after more than five years.

5. In view of the above facts, I do not find any justification to allow an application for restoration of earlier application which is hopelessly time barred and the applicant has not offered any explanation or "sufficient cause" that prevented him or his counsel from appearing in Court on 21.4.2006 (if we accept that his counsel did not appear on the said date) till 23.7.2011. Consequently restoration application (CMA No. 850/2011) is dismissed and other pending applications having become infructuous are also dismissed.

JUDGE

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