IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No. S-648 of 2025
[Muhammad Azeem Through Attorney Kamran Khan v. District and Sessions Judge Tando Muhammad Khan & Others]

Counsel for Petitioner:	Mr. Sajjad Ali Zounr, Advocate along with Mr. Shabaz Ali Arbab.
Counsels/ Representatives for Respondents:	Mr. Imran Laghari, Advocate for Respondent No. 2-5, 8 & 15-18. Fahad Khalilullah, Mukhtiarkar, Tando Muhammad Khan / Respondent No.10.
Date of Hearing:	08.12.2025
Date of Judgment:	08.12.2025

JUDGMENT

***RIAZAT ALI SAHAR, J*: -** Through this petition, the Petitioner submits that he is aggrieved by the impugned order dated 30-09-2025 passed by the learned District & Sessions Judge, Tando Muhammad Khan in Civil Revision No.18/2025. The said order maintains the earlier order dated 14.05.2025 of the learned Senior Civil Judge-II, Tando Muhammad Khan dismissing Civil Misc. Application No. 43/2025 filed under Order IX Rule 4 CPC. Both Courts below failed to consider the applicable law, material facts and judicial principles governing restoration of suits. Hence, the Petitioner invokes the constitutional jurisdiction of this Court under Article 199. Thus, seeking following reliefs:

> **i.** *To declare that the order dated 30-09-2025 passed by learned District & Sessions Judge Tando Muhammad Khan and order dated 14-05-2025 passed by the learned Senior Civil Judge-II, Tando Muhammad Khan in F.C Suit No. 119/2020 are in contravention of applicable laws, suffer from illegality, and are liable to be set aside.*

ii. *To restore the F.C Suit No. 119/2020 in the Court of Senior Civil Judge-II, Tando Muhammad Khan to its original stage by accepting this constitutional petition and further direct the learned trial court to record evidence in this suit.*

iii. *Any other orders as this Honourable Court deems fit and proper in the arisen circumstances of the case.*

iv. *Costs of this petition be saddled upon the respondents.*

2. Learned counsel for the Petitioner contended that the impugned orders passed by both the learned Trial Court as well as the learned Revisional Court suffer from manifest illegality, material irregularity and non-application of judicial mind, inasmuch as the Courts below failed to appreciate the settled principles governing dismissal and restoration of suits under the Code of Civil Procedure, 1908. He submitted that the suit involved serious allegations of fraud, fabrication of a registered sale deed and illegal deprivation of proprietary **rights—issues** which, by their very nature, warranted adjudication strictly on merits rather than being scuttled on technical grounds. It was further argued that the learned **Trial Court dismissed the suit** in a slipshod manner without issuing notice to the Petitioner, without affording him an opportunity of being heard and solely on the basis of an unverified and unsupported statement of counsel, contrary to the procedural mandate under the CPC, Sindh Civil Court Rules and constitutional guarantee of fair trial under Article 10-A of the Constitution. Learned counsel emphasized that even assuming absence of the Petitioner or his advocate, the learned Trial Court was legally bound to frame issues under Order XIV CPC and at most, dismiss the pending interlocutory application under Order XXXIX Rules 1 & 2 CPC, instead of dismissing the entire suit. He further asserted that the Revisional Court committed grave error by mechanically endorsing the illegal act of the Trial Court and by refusing to consider or apply the case-law cited at length, merely terming it 'distinguished' without assigning any rationale, thereby rendering the impugned order non-speaking and devoid of judicial reasoning. Learned counsel

vehemently argued that when an order is void, *coram non judice*, or passed in violation of due process, limitation does not run against it and the courts below misdirected themselves by treating the matter as one of limitation rather than substantial injustice. He further submitted that the concept of "sufficient cause" is flexible and intended to advance justice and that the lower fora failed to exercise their discretion judiciously by ignoring the fact that the Petitioner was never afforded a fair opportunity to contest the matter. In view of the above, learned counsel maintained that the impugned orders are unsustainable, violative of statutory provisions and constitutional safeguards and warrant interference under the supervisory constitutional jurisdiction of this Court.

3. On the other hand, learned counsel for Respondent No.2 to 5, 8 and 15 to 18 vehemently opposed the application and submitted that the Petitioner had utterly failed to demonstrate any plausible or legally cognizable ground for restoration. He pointed out that although the Petitioner had produced treatment receipts up to 25.05.2023, no medical documents whatsoever were furnished for any period thereafter, nor was the learned Trial Court or even his own counsel informed of any alleged prolonged illness, thereby rendering the plea of unavoidable absence wholly unsubstantiated. Learned counsel emphasized that the Petitioner remained absent on 20.07.2023, 27.07.2023 and 07.08.2023, while the Petitioner's own advocate categorically stated that the Petitioner had been out of contact for the "last five hearings," which, according to him, clearly reflected gross negligence and lack of bona fides. He further argued that the assertion that the Petitioner's presence was not required is misconceived, as on 07.08.2023 the matter was fixed for arguments on interlocutory applications under Order XXXIX Rules 1 & 2 CPC and objections under Order VII Rule 11 CPC, proceedings which undoubtedly required the presence or active participation of the party or his counsel. Reliance was placed on the principle laid down in *1995 CLC 461 (Karachi P-B)* to contend that a litigant who fails to pursue his own case cannot later seek indulgence from the Court.

Learned counsel further contended that the Petitioner had violated Section 42 of the Sindh Civil Court Rules by failing to notify the Court or his counsel regarding any incapacity **to appear and that the restoration application, filed after an inordinate delay of "9 months and 29 days", was squarely hit by Article 163 of the Limitation Act, 1908, which prescribes a 30-days** limitation period for such relief. He maintained that the Court is not under any statutory obligation to repeatedly issue notices or reminders and that it is the duty of the litigant to vigilantly prosecute his matter. Lastly, he asserted that the Petitioner had not approached the Court with clean hands and that restoration of a time-barred, negligently prosecuted suit would constitute an abuse of process. Accordingly, he prayed for dismissal of the petition.

4. Heard the learned counsel for the Petitioner as well as the learned counsel for the Respondents at considerable length and perused the available record with their able assistance. The rival contentions reveal that the core dispute centers upon the legality, propriety and correctness of the orders passed by the learned Trial Court and the learned Revisional Court in dismissing the suit for non-prosecution and subsequently refusing its restoration. The material placed before this Court, including the statements of counsel, medical receipts, procedural history and impugned findings, necessitates examination of whether the dismissal of the suit was in accordance with law and whether the application for restoration suffered from the bar of limitation or was meritorious on substantive grounds.

5. It is by now settled law that the powers of the civil courts under the Code of Civil Procedure, 1908 are intended to advance justice rather than defeat it. The Supreme Court, in *Faryal Arif Latif v. Arif Latif* (2025 SCMR 395) emphasized that the CPC is a consolidatory procedural statute meant to facilitate adjudication on merits and that procedural technicalities must be interpreted in a manner that does not obstruct substantial justice. This principle must guide the judicial mind while examining dismissals for default.

6. The Trial Court dismissed the suit at a stage when interlocutory applications under Order XXXIX Rules 1 & 2 CPC and objections under Order VII Rule 11 CPC were pending. Such a stage is not the "date of hearing" in terms of Order IX Rule 8 CPC. The Supreme Court in Abdul Latif v. Aqeel Ahmed (2006 SCMR 789) drew a clear distinction between "date of appearance" and "date of hearing," holding that a suit cannot be dismissed for non-prosecution on a mere date of appearance, unless such date is fixed for taking a substantive step in the proceedings. Moreover in a recent judgment of Khurshid Ali Khan versus Muhammad Ayub and others reported in PLD 2025 SC 718 Honourable Supreme Court has held that:

> "5……In the suit the issues were framed and the moment issues are framed in a suit, it (suit) becomes ripe for hearing….."

7. Meaning thereby, the date of hearing means that when the suit is fixed for evidence or examination of parties under order X rule 1 but it cannot be said that framing of issues is date of hearing because as per order XIV Rule 1 sub rule 5 the Court has to frame issues after reading the plaint and written statements. Though this rule also mentions framing of issues as first date of hearing and also empowers the court to examine the parties, however, perusal of the diaries of the trial court does not reflect any notice to the parties to appear for examination therefore, it will be assumed that Court had sufficient material to frame issues from pleadings (plaint and written statements) therefore did not call parties and without calling the parties framing of issues is not a date of hearing. Consequently, I am of the opinion that the order dated 07.08.2023 passed by trial court was without jurisdiction.

8. The Revisional Court, unfortunately, failed to examine the matter through the prism of established judicial standards. Instead of scrutinizing whether the Trial Court acted within jurisdiction and in accordance with procedural safeguards, it merely endorsed the order without a speaking analysis. This mechanical

affirmation compromises the requirement of judicial reasoning mandated under Section 115 CPC.

9. The argument regarding limitation also appears misconceived. It is well settled principle of law that when the suit is fixed for determination of interlocutory proceedings and not for hearing then order of dismissal of suit under order IX rule 8 is without jurisdiction and same is to be set aside under section 151 CPC instead of under Order ix Rule 9 and in such eventuality limitation is governed by Article 181 instead of Article 63 of the Limitation Act, 1908. Reliance is placed on the judgment of Faqir Alam and 10 others 1986 CLC 1320.

10. I have gone through the aforesaid authorities. It may be observed that it is settled principle of law that inherent powers cannot be resorted to, when there is a specific provision in the civil procedure applicable to an eventuality, and that if the remedy provided by such provision is not availed of within the period of limitation resort cannot be had to the inherent powers available under section 151 CPC. In the instant case however the question is as to whether dismissal of suit on 07.08.2023 can be regarded to be one falling under order IX Rule 8 CPC as has already been stated, the aforesaid date was fixed for appearance of the plaintiff and the notice to the plaintiff for the said date has also not been returned after service. Thus, the date liked for the appearance of the party cannot be said to be a date of hearing within the meaning of Order IX Rule 8 CPC. The provisions of Order IX Rule 8 CPC would be attracted only when the suit is fixed for hearing and not otherwise. If a dismissal is ordered on a date not fixed for hearing, the order of dismissal of suit would not fall under Order IX Rule 8 CPC, and therefore, such an order would be without jurisdiction. Thus the argument that inherent powers could not be invoked to overcome the limitation is not available in the instant case, because I am of the view that order of dismissal on a date not fixed for hearing is ab initio, void and there is no question of limitation and in any case, the period of limitation will be governed by the Article 181 of the

Limitation Act, 1908 and not by Article 176 of the Limitation Act, 1908.

See also Pehlwan Goth Welfare Council through General Attorney v/s District co Ordination Officer Karachi (DCO) and 13 others reported in PLD 2012 Sindh 110.

11. The Trial Court also failed to appreciate the serious nature of allegations of fraud, deprivation of property, and challenge to a registered sale deed matters which the Honourable Supreme Court has repeatedly held must be adjudicated strictly on merits. A dismissal for default cannot extinguish rights in immovable property where evidence has never been recorded. A litigant cannot be non-suited on technical grounds in matters involving proprietary rights.

12. Restoration is further supported by the jurisprudence of this Court in *Ghulam Sarwar v. Mir Shabbir* (R.A. No. S-62 of 2017), where restoration was allowed despite delay and objections, on the ground that adjudication on merits must prevail and valuable rights cannot be defeated for non-appearance where explanation, though imperfect, is genuine.

13. The cumulative effect of the record reveals that (i) the Trial Court misapplied Order IX CPC, (ii) the dismissal was not passed on a lawful "date of hearing" as required under the standards articulated in *2006 SCMR 789*, (iii) the Revisional Court committed jurisdictional error in failing to correct the legal misdirection, and (iv) the Petitioner demonstrated sufficient cause to warrant restoration under the combined reading of Order IX Rule 4 CPC, Section 151 CPC, and Sections 5 & 18 of the Limitation Act, 1908.

14. Technicalities cannot be permitted to override substantive adjudication, particularly where the right to property under Articles 23 and 24 of the Constitution and the right to fair trial and due process under Article 10-A of the Constitution are

implicated. Courts exist to decide disputes on merits, not to penalize litigants through rigid formalism.

15. For the foregoing reasons, I find that the impugned orders dated 14.05.2025 and 30.09.2025 suffer from material illegality, jurisdictional defect, and failure to exercise lawful discretion. Both orders are therefore **set aside**, and Civil Suit No.119/2020 is **restored to its original position**. The learned Trial Court is directed to proceed with the matter expeditiously, frame issues and record evidence, or entertain interlocutory application without grant of unnecessary adjournments. A neutral and final opportunity shall be provided to both parties for representation.

16. Petition stands **disposed of**. No order as to costs.

JUDGE

Abdullahchanna/PS