

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

Civil Revision No.30/2022

[Rao Naseem Tahsin vs. Warisul Haque]

Applicant: Through Mr. Habibullah Chanio, Advocate
 Respondent: Through Mr. Zafar Iqbal Dutt, Advocate.
 Date of Hg & Order **14.10.2025**

ARSHAD HUSSAIN KHAN, J. The Applicant, through the instant Civil Revision has assailed the order dated **26.11.2021**, passed by the learned III-Additional District Judge, Karachi (South) in Civil Appeal No. 186 of 2017, whereby the application under Order 41 Rule 19 CPC Read with Section 151 CPC filed by the present applicant for recalling the Order dated **19.11.2018** was dismissed. The applicant in the instant revision application has made the following prayers:

- (a) To allow the instant Revision and set aside the Impugned Order dated 26-11-2021 passed by the Learned IIIrd Additional District & Sessions Judge South Karachi in Civil Appeal No.186/2017,
- (b) Remand back the Civil Appeal No. 186/2017 to the Court of Learned III-Additional District & Sessions Judge South Karachi to decide afresh in accordance with law.
- (c) Grant any further relief(s) that this Court deems appropriate in the circumstances of the instant civil revision &
- (d) Cost of the instant Civil Revision.

2. **Concisely**, the facts of the case that the applicant filed Civil Suit No.748/2016 for recovery of Rs.41,70,000/- against the respondent-Warisul Haque, which was dismissed by learned IX Senior Civil Judge, Karachi [South], vide judgment and decree dated **25.09.2017 and 26.09.2017**. The applicant preferred Civil Appeal No.186/2017 before the learned IIIrd Additional District Judge [South], which was subsequently dismissed in default on **19.11.2018**. Later, the applicant's application for restoration of the said appeal was also dismissed, vide order dated **26.11.2021**, giving rise to the present revision application.

3. **Learned counsel for the applicant has contended** that the impugned order dated **26.11.2021** is arbitrary and contrary to law, as the learned appellate court has failed to appreciate that the applicant had earlier filed a transfer application owing to his bona fide

apprehension and loss of faith in the court of the IIIrd Additional District & Sessions Judge, Karachi [South], which ought to have been decided prior to passing any order in the appeal. It was argued that the act of the court should not prejudice any party, and reliance was placed upon the dictum laid down in the case reported as 2019 SCMR 362. Learned counsel has further argued that the impugned order was passed in violation of the applicant's right to fair trial as guaranteed under Article 10-A of the Constitution, since the appeal was dismissed in default without affording him an opportunity of hearing. He has contended that the settled principle of law favours adjudication on merits rather than dismissal on technicalities, and that no litigant should be condemned unheard. It was also urged that the impugned order reflects non-application of judicial mind and a pre-determined approach, which has shaken the applicant's confidence in the impartiality of the forum. Lastly, learned counsel has prayed for setting aside the impugned order in the interest of justice.

4. **On the other hand**, learned counsel for the respondent has opposed the present civil revision and submitted that the appeal, out of which the impugned order arises, was instituted in the year 2017 but had remained pending without any substantial progress owing to the appellant's persistent non-prosecution. It was contended that the appellant had earlier filed a transfer application, which was dismissed by the learned District Judge, whereafter he preferred Civil Revision No.71 of 2018 before this Court, however, even that revision was not pursued and was eventually dismissed for non-prosecution on 29.01.2020, while a restoration application in respect thereof is still pending adjudication. Learned counsel further argued that despite availing the benefit of an order of status quo, the appellant failed to advance arguments in the appeal and continued to file mere intimations regarding the pendency of the said revision without producing any stay order or report of progress from this Court. It was further pointed out that the appellate court had on multiple occasions directed the appellant/applicant to place on the record any restraining order passed in the said proceedings, but he neither complied with such directions nor appeared to proceed with the matter. Learned counsel submitted that the appellant/applicant has deliberately prolonged the proceedings,

and his conduct throughout reflects a lack of bona fides and absence of any genuine intention to prosecute the matter; hence, no sufficient cause exists to justify the recall or restoration of the impugned order.

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

Insofar as the contention of the learned counsel for the applicant is concerned, the same appears to be misconceived and unsupported by the record. The plea that the appeal was dismissed without affording opportunity of hearing or during the pendency of a transfer application and revision petition does not hold merit, as no restraining order from the High Court was ever produced before the appellate forum, nor was any effort shown to diligently pursue the said proceedings. The record, on the contrary, demonstrates that the applicant repeatedly sought adjournments and remained absent despite having the benefit of an order of status quo, thereby exhibiting lack of bona fide intention to prosecute the appeal. The argument regarding violation of the right to fair trial is equally unfounded, since ample opportunities had been afforded, which were not availed. **Conversely**, the submissions advanced by the learned counsel for the respondent carry weight and stand fortified by the record, which clearly reflects the applicant's persistent negligence and dilatory conduct resulting in dismissal of both the appeal and the restoration application. The principle that the act of the court shall prejudice no one has no application here, since the dismissal of the appeal was a direct consequence of the applicant's own inaction rather than any procedural irregularity attributable to the Court. The impugned orders, thus, appear to have been passed upon due appreciation of facts and law and do not disclose any arbitrariness or illegality warranting interference by this Court.

6. Under Order XLI Rule 19 CPC, restoration of an appeal dismissed for non-prosecution can only be allowed upon showing sufficient cause for previous non-appearance. No such cause was established in the present case, as the applicant offered no explanation for his absence on the date of dismissal, nor did he produce any material to justify his non-appearance. This Court, while exercising revisional jurisdiction under Section 115 CPC, has examined the legality and propriety of the impugned orders. The record reflects that

the appellate court, vide order dated **19.11.2018**, dismissed the appeal for non-prosecution after noting that despite repeated opportunities, the appellant neither advanced arguments nor produced any restraining order from this Court to justify further adjournment on the ground of pendency of Civil Revision No.71 of 2018 before the this Court. It was observed that mere pendency of such revision did not preclude continuation of proceedings before the appellate forum in the absence of a specific stay order, and that the appellant's persistent absence exhibited lack of interest in prosecuting the matter. Subsequently, through order dated **26.11.2021**, the application for restoration was also dismissed, the court found that the appellant had consistently displayed a dilatory attitude and had failed to pursue the said revision, which itself stood dismissed for non-prosecution; and that his conduct reflected want of *bona fides*.

7. From a perusal of the record, it is evident that the applicant had been intentionally delaying the proceedings of his civil appeal on one pretext or another. He also failed to diligently pursue Civil Revision No.71 of 2018, which had been filed to challenge the dismissal of his transfer application before this Court, allowing the same to remain pending without any progress for nearly two years, resulting in its dismissal for non-prosecution on 29.01.2020. The record further reflects that although the Presiding Officer, against whom the applicant had earlier expressed grievance, was transferred from the appellate court in March 2021, the restoration application continued to remain pending thereafter. Yet, instead of appearing personally or arguing the matter, learned counsel for the applicant repeatedly sent his associate merely to seek adjournments. This consistent pattern of non-diligent conduct clearly indicates that the applicant had no genuine intention to pursue his appeal, which had remained pending since 2017 without any meaningful progress. In the absence of any reasonable or bona fide cause for his continued default, the appellate court rightly declined to restore the appeal and dismissed the restoration application in accordance with law.

8. It is also well settled that law aids the vigilant and not those who sleep over their rights. A party that remains negligent in pursuing its own cause cannot claim indulgence on equitable grounds. The

applicant, having persistently failed to prosecute his appeal and even his earlier revision, cannot now invoke the discretionary jurisdiction of this Court to undo the consequences of his own inaction. Such like indolent person(s) cannot be allowed to play with the process of the Court and linger on the matter on one pretext or the other, that too, without any plausible and valid reason. Reliance in this regard can be placed on case reported as *Muhammad Asim Versus Dr. Abdul Hamid Jan and others* [2025 S C M R 624]. The principles of justice demand diligence, not laxity, and the record in the present case discloses no circumstance warranting relaxation of that settled rule.

9. No illegality, material irregularity, or jurisdictional defect has been demonstrated so as to warrant interference with the impugned order. It is a well-settled proposition that where no error of law or procedural defect is shown in the findings of fact recorded by the court below, the High Court, in exercise of its revisional jurisdiction, cannot substitute its own view merely because another conclusion may also be drawn.

10. In the circumstances, this Court finds that the learned appellate court has rightly passed the order dated **19.11.2018** and that the applicant has miserably failed to make out any case in his application under Order 41 Rule 19 CPC, as such the same was also rightly dismissed by the appellate court through the impugned order dated **26.11.2021**. Accordingly, this Civil Revision Application, being without merit, is dismissed along with pending application(s), if any.

JUDGE

Jamil*