

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Revision Application No.S-02 of 2011

Present: Mr. Justice Jan Ali Junejo

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| For Appellant: | Mr. Rafiq Ahmed K. Abro, learned advocate |
| For Respondents: | Mr. Abdul Waris Bhutto learned A.A.G. Sindh |
| Date of hearing: | 16.04.2025 |
| Date of Order: | 16.04.2025 |

ORDER

Jan Ali Junejo, J:-- This Order shall determine the fate of application under Section 151, of the Code of Civil Procedure, 1908 filed on behalf of the Applicants for restoration of the Revision Application, which was dismissed in non-prosecution vide Order dated: 10-09-2020.

2. The revision application challenges the judgment and decree dated 15.09.2010 and 18.09.2010, respectively, passed by the learned 1st Additional District Judge, Dadu. The suit was initially decreed by the trial Court, but the appellate court reversed the decision, prompting the applicants to file this revision.

3. Learned counsel for the Applicant submitted that the Civil Revision Application was dismissed on 10.09.2020 for non-prosecution due to circumstances entirely beyond the Applicants' control. The senior counsel, Mr. Illahi Bux Kehar, had passed away, as noted in the Court's order dated 17.08.2020. Despite having a correct and unchanged address on record, the Applicants were never served with notice of the hearing. The continuation of civil proceedings was also hampered due to COVID-19, and the surviving junior counsel, Mr. Thakur Das, aged over 80, was unable to attend court due to health issues. Upon personally inquiring on 08.10.2020, the Applicants discovered the

dismissal and promptly filed the present application. It was emphasized that no limitation is prescribed for such applications and that Article 181 of the Limitation Act, 1908 governs the present case. It is further argued that the matter involves valuable property rights and conflicting decisions between the trial and appellate Courts. Lastly, the learned counsel has prayed for setting aside of the Order dated: 10-09-2020 and restoration of the Civil Revision Application.

4. Importantly, the learned Additional Advocate General, appearing on behalf of the respondents, raised no objection to the restoration and agreed that the matter may be heard and decided on merits.

5. The record demonstrates that the non-appearance of the Applicants was not due to negligence, indifference, or willful default, but due to unforeseen and unavoidable circumstances, including the death of the lead counsel, disruption of court work due to COVID-19, and non-service of notice. The Applicants took prompt steps after becoming aware of the dismissal and moved the present application in a bona fide manner. It is a settled principle of law that substantial justice should not be defeated by technical procedural defaults, particularly where valuable property rights and conflicting judicial findings are at stake. Moreover, in the absence of any specific provision prescribing limitation for restoration of a civil revision dismissed for default, the application falls within the ambit of Article 181 of the Limitation Act, 1908, which allows for a three-year limitation from the date when the right to apply accrues. The present application, having been filed immediately upon acquiring knowledge of the dismissal, is well within the prescribed period and is not barred by limitation. It is also well-settled that Section 5 of the Limitation Act does not apply to such applications. The fact that the learned Additional Advocate General has not opposed the present application further supports the conclusion that no prejudice will be caused to the opposing party by restoration. It is an established legal position that the Code of Civil

Procedure, 1908 does not contain any express provision for the restoration of a revision application dismissed for non-prosecution. In such circumstances, an aggrieved litigant is not left remediless, as relief may be sought by invoking the inherent powers of the Court under Section 151, C.P.C. The fundamental principle guiding judicial discretion is that justice must not be sacrificed at the altar of procedural technicalities, and courts must endeavour to decide matters on merits unless an insurmountable legal or factual barrier prevents such adjudication. Therefore, to address procedural voids or prevent miscarriage of justice, the inherent jurisdiction vested in civil courts—including trial, appellate, and revisional courts—under Section 151, C.P.C. may be exercised, provided there exists no specific provision within the Code to address the issue at hand. Reliance in this regard may be placed on the authoritative pronouncement of the Honourable Supreme Court of Pakistan in the case titled *Muhammad Sadiq v. Mst. Bashiran and 9 others reported as (PLD 2000 SC 820)*, wherein the Apex Court upheld the invocation of inherent jurisdiction in analogous circumstances to advance the cause of substantial justice.

6. In view of the above detailed circumstances, the submissions of both parties, the legal position on restoration under Section 151 C.P.C., and the binding precedent of Supreme Court, I am of the considered view that the Applicants have made out a sufficient cause for restoration. The ends of justice require that the Civil Revision Application be adjudicated on merits, especially when it has already been admitted for hearing and involves substantial civil rights. Accordingly, the present application is allowed. The Order dated 10.09.2020 is set aside, and Civil Revision Application No.S-02 of 2011 is restored to its original position. Office is directed to relist the matter for hearing on merits in due course.

JUDGE