THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

IInd Appeal No.14 of 2026

Appellant:	Mst. Musharat Bibi through Mr. Ayatullah Khuwaja, Advocate.
Respondent No.1:	Khalil Ahmed Qureshi through Mrs. Razia Ali Zaman Patoli, Advocate.
Respondents No.2to5:	Assistant Commissioner City Hyderabad and others through Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.
Respondent No.6:	Nemo.
Date of hearing:	30.10.2026.
Date of order:	20.11.2026.

JUDGMENT

MUHAMMAD HUMAYON KHAN, J: - This second appeal arises out of proceedings in a suit for declaration, specific performance with possession, damages and permanent injunction, being F.C. Suit No.506 of 2023, that was instituted by the Appellant before the learned Senior Civil Judge-VII, Hyderabad, against the Respondents in respect of a Sale Agreement dated 07.08.2021 statedly between the parties in respect of House No. 239, measuring 1000 sq. ft., out of City Survey No. G/4407/1, located in Ward 'G', Gulshan-e-Ellahi Phase-I, Noorani Basti, Hyderabad ("suit property"). The suit was partly decreed to the extent declaring her lawful purchaser of the suit properly House against all the Respondents by Judgment and Decree dated 31.05.2025. The said Judgment and Decree were challenged by the Respondent No. 1 in First Appeal No. 188 of 2025 praying to remand the case back to the learned Trial Court which came up before the learned Additional District Judge-IX, Hyderabad, and was allowed by him by Judgment dated 10.01.2026 and Decree dated 19.01.2026. The operative portion of the Judgment dated 10.01.2026 is para-15 which reads:

> "15. In view of above, the instant appeal is hereby allowed and the impugned judgment is hereby set-aside and the case is remanded back to the learned Trial Court with directions to proceed further with the case and after giving a chance to cross-examine the respondent No. 1/plaintiff and recording evidence

> of the appellant/defendant side decide the same afresh on merits within 03 months. The parties are directed to appear before the Trial Court. The appeal is disposed of accordingly. The parties to be bear their own cost."

The Appellant has challenged the Judgment and Decree of the learned Additional District Judge in this second appeal and has prayed for restoring those of the learned Senior Civil Judge.

2. I have heard learned Mr. Aayatullah Khuwaja for the Appellant, learned Mrs. Razia Ali Zaman Patoli for the Respondent No. 1 and Mr. Allah Bachayo Soomro, the learned Additional Advocate General Sindh, and have gone through the record of the case

3. According to the record of the case, the suit was admitted on 15.03.2023 by the learned Senior Civil Judge and notices were ordered to be issued to the defendants/respondents. Thereafter, after repeated notices through usual modes on four (4) dates, the Respondent No. 1 remained unserved. Consequently, on 20.07.2023, the learned Senior Civil Judge ordered for notices to be served upon the Respondent No. 1 through publication which was done according to Case Diary and Order both dated 02.08.2023. After publication, service was held good on the Respondent No. 1 by Order dated 02.08.2023 which reads as follows (p. 63 of the Trial R&Ps):

> "Today matter is fixed for service upon defendant No. 1. Initially summons were issued by way of registered A.D, courier service, TCS and by way of pasting through bailiff to the defendants No. 2 to 5 were served on 04.04.2023 while defendant No. 6 served on 18.05.2023 but none is appeared from defendant No. 1. Again summons was issued against the defendant No. 1 through publication in 'Daily Express' newspaper dated 28.07.2023. However, no one is present from defendant No. 1 despite of all modes of service adopted but to no avail, therefore under such facts and circumstances service upon defendants is held good."

4. Afterwards, the case was kept for filing of written statements by the Respondent Nos. 1 to 6 on multiple dates and according to case diaries dated 18.08.2023, 02.09.2023, 07.09.2023 and 14.09.2023, last and final chances were provided to the Respondents. However, after their failure to file written statements or even to appear, the learned Senior Civil Judge declared the Respondents *ex parte* by Case Diary and a speaking Order both dated 23.09.2023.

5. Thereafter, the learned Senior Civil Judge recorded the *ex parte* evidence of the Appellant and fixed the matter for arguments on

numerous dates. At the stage of arguments, on 22.12.2023, an application under r. 7 of O. IX of the CPC was filed on behalf of the Respondent No. 1 wherein it was stated that he was unaware of the matter, that notices were not served on him and that he had valuable rights involved in the suit. The said application was allowed by Order dated 23.01.2024 and consequently the Respondent No. 1 was allowed to file his written statement subject to payment of the costs of Rs.10,000/-.

6. The Respondent No. 1 however failed to deposit the cost on numerous dates, i.e. 06.02.2024, 10.02.2024, 13.02.2024 and 17.02.2024. Whereas on 20.02.2024, the following case diary was made:

> "Matter called. Plaintiff is called absent, her counsel is present. Counsel for defendant No. 1 is present and requested for time. From perusal of record, it transpires that defendant No. 1 has neither deposited fine amount nor filed W.S. Order passed on order sheet. Defendant No. 01 is debarred from filing W.S. Defendants Nos. 02 to 06 have already been declared ex-parte. Matter is adjourned to 22.02.2023, for final arguments."

7. On 22.02.2024, another application under r. 7 of O. IX read with s. 151 of the CPC was made on behalf of the Respondent No. 1 which was in the following terms (Exh-31, pp. 351 to 357 of Trial R&Ps):

> "It is prayed on behalf of the defendant that this Honourable Court may be pleased to recall its order dated 21.02.2023 whereby the defendant No. 1 was debarred from filing the written statement in above matter as the defendant No. 1 was given last chance to file the written statement on 21.02.2023 even the counsel for defendant No. 1 prepared the draft of the written statement and produce before the reader but the defendant No. 1 due to sudden death of his relative could not come in the court and subsequently this Honourable Court has debarred him from filing written statement. Hence this application."

The application was supported with an affidavit of the Respondent No. 1 in the same terms. The said application was allowed on 02.03.2024 and the matter was restored to the original position. The Respondent No. 1 filed his written statement and thereafter issues were framed and the parties were directed to record their evidence as per the case diary dated 02.03.2024.

8. On 11.03.2024, the matter was taken up again, and the evidence of the Appellant was recorded and her cross-examination was done by the counsel for the Respondent. Subsequently, on 20.03.2024, 26.03.2024, 29.04.2024 and 08.05.2024, the matter was adjourned for various reasons. On 23.05.2024, the matter was again taken up and an adjournment application was filed by the Respondent No. 1's counsel which was granted and a *last and final chance* was extended to the Respondent No. 1. The matter was taken up again on 29.05.2024, 02.07.2024 and 15.07.2024 during which period an application under r. 10 of O. I of the CPC was filed. On 15.07.2024, again a *last and final chance* was extended. Thereafter, again on 13.08.2024, 29.08.2024, 14.09.2024, 28.09.2024 and 12.10.2024, the case was adjourned for various reasons (except on 28.09.2024 when the Presiding Officer was on training at Islamabad). On 30.10.2024, the evidence of the remaining witnesses of the Appellant was recorded, however, no one appeared on behalf of the Respondent No. 1 and so the cross-examination portions in their evidence sheets were marked as "nil" and their side was closed.

9. On 16.11.2024, the Counsel for the Respondent No. 1 appeared and the matter was adjourned to 29.11.2024 for the evidence of the Respondent No. 1 as a *last and final chance*, and the same continued to be the situation on 29.11.2024, 10.12.2024, 08.01.2025 and 21.01.2025. Consequently, at the relevant time, at least four (4) last and final chances were afforded to the Respondent No. 1. The matter was thereafter kept for final arguments of the Respondent No. 1's side on 01.02.2025, 19.02.2025 (holiday), 06.03.2025, 24.03.2025, 09.04.2025, 21.04.2025, 23.04.2025, 29.04.2025 and 14.05.2025, on most of which dates last and final chances were afforded but the Respondent No. 1 and his counsel continuously remained absent. Finally, the impugned Judgment and Decree were passed.

10. On a perusal of the record, I am in no manner of doubt that the Respondent No. 1 along with his counsel before the learned Senior Civil Judge have been guilty of gross and inexcusable negligence. He was twice given the opportunity to file his written statement and record his evidence. At first, he failed to comply with the Order dated 23.01.2024 to deposit costs of Rs.10,000/- on four (4) dates from 06.02.2024 to 20.02.2024 although the Order dated

23.01.2024 was immensely clear and unambiguous. Thereafter, he was again given the opportunity to do so on 22.02.2024 when he filed a second application under r. 7 of O. IX read with s. 151 of the CPC and in which he had admitted that he was given a last and final chance but could not do so on the ground that some relative of his had passed away. No name, relationship or further information was provided by him and yet, on the vague grounds agitated by him, the said Application was granted on 02.03.2024. Thereupon, he filed his written statement and participated in the proceedings up till the stage of cross-examining the Appellant in her evidence, but then again disappeared. On four (4) dates of hearing from 23.05.2024 till 15.07.2024 he was again given last and final chances. Thereafter, on 30.10.2024, after the evidence of the remaining witnesses of the Appellant, he totally vanished and did not appear to record his own evidence. He remained continuously absent on four (4) dates when his evidence was due to be recorded and, on each of these dates, he was given a last and final chance. Afterwards, on nine (9) further dates the Respondent No. 1 was provided with opportunities to argue the case but he along with his counsel remained absent. Accordingly, I am of the view that the Respondent No. 1 was more than adequately and in fact beyond reasonableness, accommodated by the learned Senior Civil Judge and in spite of that he failed to cross-examine the witnesses of the Appellant or to produce his own evidence.

11. In *Rai Muhammad Riaz (decd) through LRs and others v Ejaz Ahmed and others* PLD 2021 SC 761, the Supreme Court thoroughly and in the most emphatic terms deprecated the practice of granting multiple last and final opportunities and stated that this practice must immediately be stopped. In fact, the Hon'ble Supreme Court referred to its earlier Judgment in *Moon Enterpriser CNG Station v Sui Northern Gas Pipelines Limited* 2020 SCMR 300 and held that the said judgment was binding on all courts (not including the Federal Constitutional Court) and that judicial officers would expose themselves to penal consequences in case of failure to implement the same. In *Moon Enterpriser*, it was held by the Supreme Court that (para 6; emphasis added):

> "In our view, it is important for the purpose of maintaining the confidence of the litigants in the court systems and the presiding officers that where last opportunity to produce evidence is granted and the party has been warned of the

> consequences, the court must enforce its order unfailingly and unscrupulously without exception. Such order would in our opinion not only put the system back on track and reaffirm the majesty of the law but also put a check on the trend of seeking multiple adjournments on frivolous grounds to prolong and delay proceedings without any valid or legitimate rhyme or reason. Where the Court has passed an order granting the last opportunity, it has not only passed a judicial order but also made a promise to the parties to the lis that no further adjournments will be granted for any reason. The Court must enforce its order and honour its promise. There is absolutely no room or choice to do anything else. The order to close the right to produce evidence must automatically follow failure to produce evidence despite last opportunity coupled with a warning. The trend of granting (Akhti Mouqa) then (Qatai Akhri Mouqa) and then (Qatai Qatai Akhri Mouqa) make a mockery of the provisions of law and those responsible to interpret and implement it. Such practices must be discontinued forthwith."

This same principle has time and again been agitated in different ways by the Supreme Court in *Imran Ahmad Khan Niazi v Mian Muhammad Shahbaz Sharif* 2023 SCMR 636 (para 10) and *Muhammad Asim v Dr. Abdul Hamid Jan and others* 2025 SCMR 624 (para 4) and by this Court in *Muhammad Saleem v Haresh Kumar and 14 others* PLD 2021 Sindh 381, *Chaudhry Tanveer Ahmed v Shafqat Soomro and others* 2023 SHC SUK 143 (Judgment dated 11.12.2023; Civil Revision No. S-03 of 2018; Sukkur; unreported), *Sahibzada Khan and another v Juma Khan and others* HCA No. 103 of 2024 (Judgment dated 30.01.2025; DB; Karachi; unreported) and I have myself had occasion to agitate the same principles in *Ghulam Hyder v Basram and others* 2026 SHC MPK 1635 (Judgment dated 01.09.2026; Civil Revision No. S-182 of 2024; unreported).

12. After so many opportunities, including multiple last and final chances especially from 30.10.2024, the learned Senior Civil Judge had been left with no other option but to proceed further as per law and she acted completely according to the law in marking the Appellant's witnesses' cross-examination as "nil" and closing the side of the Respondent No. 1 for evidence. I am of the firm opinion that the Respondent No. 1 had no right whatsoever to so many adjournments and chances and from the inception he has remained wrongly able to secure premium on his own wrong from the courts. I was surprised at the number of adjournments and chances (despite the label "last and final") that the Respondent No. 1 was able to secure and, in my view, he has made a mockery of the judicial process and of the courts who were obliged to never give him the benefit of his own wrong. In this

manner, even the Appellant has been wrongly put through so much litigation time without any rhyme or reason.

13. I have gone through the impugned Judgment dated 10.01.2026 and it is clear that the learned first Appellate Court has based its findings upon vague and rhetorical legal maxims, such as *audi alteram partum* and that the law favours adjudication on merit than on technicalities, however it completely lost focus of the factual and procedural history of the case in the backdrop of which the principle that the law does not favour the indolent and negligent litigant must have been adopted. On the one hand, the learned first appellate Court has admitted that multiple opportunities and chances were given to the Respondent No. 1 but on the other hand it has rested the entire judgment on vague and generic principles without any application of judicial mind or reason. The learned Additional District Judge has, with all due respect, failed to apply his judicial mind to the vital distinction between the opportunity to be heard and the denial of the said opportunity; in the present case, the Respondent No. 1 was beyond any doubt afforded the opportunity to be heard to the fullest and it was because of his own conduct that he failed to avail the same. It is not in the least conceivable from the record that any meaningful opportunity of being heard was denied to him. I am sorry to say that, in providing another unwarranted and unprecedented opportunity to the Respondent No. 1 to cross-examine the Appellant and record his own evidence, the learned first Appellate Court has acted entirely illegally and in violation of the specific judgments of the Supreme Court and of this Court on this specific matter as have been cited above.

14. I have also perused the contents of the memo of Civil Appeal No. 188 of 2025 filed by the Respondent No. 1 before the learned Additional District Judge wherein the Respondent No. 1 has agitated unsupported allegations against the learned Senior Civil Judge's Court to support his own negligence. For example, Ground-I of the Appeal is as follows:

> "1. That the trial court decided the matter in [haphazard] manner, as the appellant hardly twicely or thricely appeared before the trial court, otherwise the court staff stop him from entering into court by saying that the appellant will be allowed upon his call or turn and thereafter the appellant was as usual

> informed by court peon about the date as 10.7.2025 and when the appellant appeared there he came to know that his lis has been decided on 31.05.2025, one day before summer vacation.
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> …
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> 4. That the intentionally the appellant was not informed by the learned trial court as the peon of the learned trial court always kept the appellant out side the Court and lastly he was informed about the next date."

He has failed to provide any supporting evidence for his claims that he was now allowed to enter the court of the learned Senior Civil Judge and in fact this allegation goes to the demeanour and conduct of the entire Court of the learned Senior Civil Judge. In my view, the Respondent No. 1 was obligated to provide cogent evidence for his allegation as well as the potential motive for why, if at all, he was treated in such a manner, however, he cannot succeed on vague grounds and allegations which go to the credibility of the learned Senior Civil Judge. The learned Additional District Judge has failed to consider these grounds and given no due weight to the conduct of the Respondent No. 1. Similarly, he raised grounds as to the merits of the case which were required to be proved through his own evidence which he himself failed to record in spite of a most relaxed approach towards his conduct by the learned Senior Civil Judge. I am therefore compelled to hold that the impugned Judgment and Decree of the learned Additional District Judge are illegal, erroneous and based upon a misinterpretation of the law and misreading of the facts and require interference in second appeal.

15. For these reasons, I make the following orders:

i) This appeal is allowed with costs.

ii) Consequently, the impugned Judgment and Decree of the learned Additional District Judge are hereby set-aside, and the matter is remanded to the learned Additional District Judge to decide the appeal on merits on the available material after hearing the parties. He is directed to do the same positively within thirty (30) days of this judgment under intimation to this Court.

iii) R&Ps may be returned along with a copy of this judgment.

16. Before parting, I may note that it has most unfortunately become a commonplace nowadays for parties to be granted multiple last and final opportunities as well as adjournments on vague and generic grounds without asking for proper and supported explanations. This practice has been deprecated by the Hon'ble Supreme Court as well as this Court and must be stopped immediately for the sake of the respect and dignity of the judiciary as well as in the interest of expeditious dispensation of justice. All judicial officers must remain reminded of the observation in *Moon Enterpriser* whereby the Hon'ble Supreme Court has warned that the practice of giving multiple final opportunities is incorrect and improper and that its orders are binding and failure to comply with the same can potentially open judicial officers to disciplinary action. Let a copy of this judgment be circulated through the learned MIT-II of this Court to all learned District and Sessions Judges in the province for strict compliance and further communication to all judicial officers in their kind subordination also for strict compliance and information.

JUDGE

Approved for reporting

Abdullahchanna/PS