

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.
CP No.S-403 of 2022

(Hashim H. Muhammad & others vs. Khuram Muhammad Baig & others)

Date	Order with signature of Judge
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Disposed of

For hearing of MA No.5173/2024

05.08.2024.

Mian Mushtaq Ahmed, advocate for the petitioner
Mr. Masood Ali, advocate for respondent No.1

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Muhammad Iqbal Kalhoro, J:- Petitioner is a tenant and respondent No.1 is landlord of Shop No.1-A, admeasuring 475 sq. ft. ground floor Rehman Mansion, Saddar, Karachi. Respondent No.1 filed an application under rent laws for eviction of petitioner, which was allowed by the learned Rent Controller vide judgment dated 12.11.2021. He challenged the same judgment in rent appeal before the Additional District & Sessions Judge, South, Karachi, who dismissed the same through an order dated 31.03.2022.

2. Against both the orders, petitioner has filed this constitution petition, which was taken up first time on 26.04.2022. While issuing notices to the respondents operation of the impugned order was suspended till the next date of hearing. Thereafter, the case history shows that the case was being adjourned with a note of caution to petitioner and his counsel. On 17.04.2024 when again no one was present on behalf of the petitioner and no intimation was received by the Court, only as an indulgence the matter was adjourned with a note of caution that if none appeared on behalf of the petitioner on the next date of hearing, an appropriate order including recalling of ad-interim order would be passed, and the case was fixed on 20.05.2024.

3. On 20.05.2024 when none appeared again without any justification and intimation, the petition was dismissed for non-prosecution. Against which petitioner has filed listed application for restoration of the same. Along with application, he has filed the affidavit by his counsel stating mainly that when he was coming to the Court on the date fixed on the way he got a flat tire. In replacing the same, a lot of time was consumed, hence he could not reach the Court in time. Along with the affidavit, he has attached a photo of his car as a proof.

4. I have heard learned counsel for the parties. Learned counsel for the petitioner has struck to this ground as stated above.

5. Be that as it may, the petitioner and his counsel's absence was marked by the Court on so many occasions, as the case diaries reflect. On 17.04.2024, a more than month prior to the passing of order of dismissal of the petition for non-prosecution, when petitioner and his counsel were not present, the case was adjourned with a note of caution. Even after a more than month, when the matter was taken up on 20.05.2024 none appeared or intimated the Court. The ground of flat tire and delay because of it is not a cogent ground to excuse absence of petitioner and his counsel marked by the Court on a number of occasions. The petitioner ought to have made some alternate arrangement to inform the Court of any hindrance in the way his advocate in reaching the Court on the date. In view of above, this application merits no consideration, which is accordingly dismissed.

JUDGE

Rafiq/P.A.