

Order Sheet  
IN THE HIGH COURT OF SINDH, KARACHI

**II-Appeal No.118 of 2018**

*(M/s. Tuwairqi Steel Mills Limited vs. Mohammad Sajid Muneer)*

**Disposed of case**

1. For order on CMA No.3008/2025
2. For order on CMA No.5407/2021 (Review)

**For date of hearing**

**& order**

:           **13.05.2025**

Mr. Khadim Hussain Thahim, advocate for appellant  
Mr. Rasheed Ashraf Mughal, advocate for respondent

**ORDER**

**Muhammad Iqbal Kalhoro, J:-** When this second appeal was filed against impugned judgment and money decree directing appellant to pay Rs.3,250,000/- along with damages, a notice was issued to respondents on 14.09.2019 and the case was ordered to be fixed after four weeks. On 28.09.2018, when the matter was taken up, notice was repeated to the respondent and meanwhile operation of the impugned judgment and decree was suspended.

2.       Thereafter, when on a subsequent date viz. 13.05.2019, the matter was posted in the Court and counsel for the appellant was represented by his associate, the interim order was extended subject to furnishing a solvent surety to the extent of decretal amount within seven (07) days. Appellant could not comply with order and filed a review application instead.

3.       Thereafter, this case was being fixed before different benches and ultimately the learned Single Judge seized with the matter on 28.01.2020, ordered that unless the amount is not deposited within a week, the second appeal should be deemed to have been dismissed. However, the same Judge on 10.02.2020 when took up the matter, despite non-compliance of his earlier order adjourned it to a date in office stating that certain documents were essential for deciding the matter, which were not available.

4.       Consequently, when on 30.09.2021 the matter was taken up by the same Judge, who had granted interim relief latter on and who had on the first date of hearing had issued notice to the respondents, went through the case diaries and came across the order dated 28.12.2020. He, then, influenced by such order formed a view that since the order had not been complied with, the second appeal stood dismissed and hence directed the office to consign

the file to the record room. Hence, the listed application (CMA No.5407/2021) for review of the said order has been filed.

5. Learned counsel for the appellant has submitted that at the most non-compliance of the order dated 13.05.2019 would result in non-continuation of the interim order as it was subject to that condition, and the appeal cannot be dismissed. Learned Single Judge has erred in holding that because of non-compliance of the order dated 28.01.2020, the appeal stood dismissed.

6. In contra, learned counsel for respondent has supported impugned order and submitted that appellant was not even ready to proceed with the appeal.

7. Be that as it may, the condition of payment of amount imposed upon the appellant was in relation to extension of the interim order and not for maintaining the appeal itself. The learned Single Judge seized with the matter on 28.01.2020, without taking into account the context of such condition, blankly observed that unless the amount is deposited within one week, the second appeal would be deemed to have been dismissed. But, nonetheless, when the same Judge took up the matter on 10.02.2020, the next date, instead of dismissing the appeal for non-compliance, he simply adjourned it for want of certain papers. It would mean that he himself substituted his own conditional order with the order dated 10.02.2020 by simply adjourning the case.

8. When the matter was ultimately taken up on 30.09.2021, the order dated 28.01.2020 was not in field virtually, therefore, the observation in the order sought to be reviewed that appellant had failed to challenge the order dated 28.01.2020 and his such failure will be translated into dismissal of the appeal is not a correct approach. Because there was no order which needed to be challenged in appeal. Therefore, the order dated 30.09.2021 deeming the appeal to have been dismissed for non-compliance is neither supported by facts nor by law. We, hence, set aside the impugned order and restore the appeal to the same position to be heard by the learned Single Judge on merits as per Roster preferably within 06 months.

The listed review application is disposed of in above terms.

JUDGE

JUDGE

Rafiq/P.A.