

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

High Court Appeal No.312 of 2024

Appellant : Mirza Afzal Baig S/o Mirza Ahmed Baig
through Mr. Abdul Samad Memon,
Advocate

Respondents : Sindh Industrial Trading Estate Limited
and others
Nemo.

Date of Hearing : 23.09.2026

Date of Judgment: 23.09.2026

J U D G M E N T

Amjad Ali Sahito, J.- Through this High Court Appeal, the Appellant has called in question the order dated 05.08.2024 passed by the learned Single Judge of this Court in Suit No.1416 of 2007, whereby his application under Order IX Rule 9 read with Section 151 CPC for restoration of the suit, which had earlier been dismissed for non-prosecution vide order dated 28.02.2018, as well as the accompanying application under Section 5 of the Limitation Act for condonation of delay, were dismissed.

2. Briefly stated, the Appellant Instituted Suit No.1416 of 2007 seeking declaration, injunction and damages/compensation against the Respondents in respect of land measuring approximately 219 acres and 38 ghuntas, situated at Deh Kalo Kohar, Taluka Thano Bula Khan, District Jamshoro. According to the averments contained in the plaint, the Appellant had purchased the subject land through an attorney and thereafter approached the relevant authorities for mutation, conversion and issuance of an NOC for development of a housing project. It was his case that the competent authorities granted the requisite permission/NOC, following which development activities were commenced at the site.

3. The Appellant further alleged that, after commencement of the development work, officials of Defendant No.1 visited the site and directed him and his workers to discontinue the activities. He maintained that, despite having obtained the requisite permission from the competent authorities, he was subjected to harassment and threats by the defendants and their officials. On this basis, he sought declarations concerning his rights in the subject land and its development, permanent and mandatory injunctions, cancellation of the alleged allotments/documents in favour of defendants Nos.5 to 7, besides damages/compensation.

4. The record reflects that the suit was contested by the defendants. Defendant No.4 filed his written statement, raising preliminary objections as to maintainability and cause of action and denying the allegations levelled against him. Defendant No.1 also submitted a written statement, wherein, apart from taking preliminary objections, it disputed the Appellant's claim to the subject land and asserted that the same had been acquired/allotted for industrial purposes and that the Appellant had no lawful entitlement to the reliefs sought. The pleadings thus disclose that substantial issues concerning title, entitlement and the alleged development of the property were involved.

5. The suit remained pending before the learned Single Judge. On 20.04.2017, the vakalatnama of the counsel representing the Plaintiff/Appellant was discharged. The Appellant claims that he thereafter engaged another counsel. However, when the matter was taken up on 28.02.2018, neither the Appellant nor anyone on his behalf appeared. The order sheet records that, following discharge of the vakalatnama, notice had been issued to the Appellant; notwithstanding such notice, neither he nor any representative appeared before the Court. Consequently, the learned Single Judge dismissed the suit for non-prosecution along with the pending applications.

6. Upon subsequently learning of the dismissal, the Appellant moved an application under Order IX Rule 9 read with Section 151 CPC seeking restoration of the suit to its original number and position. He also sought condonation of delay under Section

5 of the Limitation Act, asserting that the delay was occasioned by circumstances beyond his control. In his supporting affidavit, he stated that neither he nor his counsel was aware that the matter had been fixed for 28.02.2018; that he was informed of the dismissal by his counsel in May 2018; that his previous counsel had withdrawn his vakalatnama; and that another counsel was thereafter engaged. He maintained that his absence was neither deliberate nor intentional and that refusal to restore the suit would cause him irreparable loss.

7. The record further reveals that, on 07.05.2018, the Appellant instituted contempt proceedings under Sections 3, 4 and 5 of the Contempt of Court Act, 2003, Article 204 of the Constitution and Sections 94 and 151 CPC, alleging violation of the injunction order passed in the suit. While considering the applications for restoration and condonation of delay, the learned Single Judge took note of the fact that the suit had been dismissed for non-prosecution on 28.02.2018 after notice had been issued to the Appellant following discharge of his counsel's vakalatnama. The explanation concerning engagement of a new counsel was also considered.

8. The learned Single Judge concluded that the explanation furnished for the delay, principally founded upon withdrawal of the previous counsel's vakalatnama and subsequent engagement of another Advocate, did not constitute sufficient cause for condonation. Accordingly, the application under Section 5 of the Limitation Act was dismissed and, consequently, the application under Order IX Rule 9 CPC for restoration of the suit was also rejected vide impugned order dated 05.08.2024, giving rise to the present appeal.

9. Learned counsel for the Appellant contended that the impugned order was contrary to the facts and law and that the learned Single Judge had failed to properly appreciate the circumstances leading to dismissal of the suit. It was submitted that the Appellant had no knowledge of the fixation of the matter for 28.02.2018 and that his previous counsel had already withdrawn his vakalatnama. According to learned counsel, the

Appellant was informed of the dismissal in May 2018 and thereafter took steps to seek restoration. It was further urged that the Appellant had remained interested in pursuing the matter, as evidenced by the contempt proceedings instituted in relation to the subject property. Learned counsel maintained that the absence was neither deliberate nor intentional and that the delay ought to have been condoned so that the dispute could be adjudicated on its merits. It was lastly contended that the Appellant ought not to be deprived of an opportunity to have the controversy determined on merits merely because of a procedural lapse.

10. We have heard learned counsel for the Appellant and examined the record with his assistance.

11. The principal question requiring determination is whether the learned Single Judge was justified in declining to condone the delay in filing the application under Order IX Rule 9 CPC and, consequently, in refusing restoration of the suit dismissed for non-prosecution on 28.02.2018. We have considered the explanation advanced by the Appellant in this regard. The order dated 28.02.2018 assumes particular significance. It records that the vakalatnama of the counsel representing the Plaintiff/Appellant had been discharged on 20.04.2017 and that notice was thereafter issued to the Appellant. The record further reflects that such notice was served, yet neither the Appellant appeared personally nor was any counsel present on his behalf. Thus, the suit was not dismissed without the Court first taking notice of the Appellant's absence or without affording an opportunity for his appearance. Despite service of notice, no one appeared on behalf of the Appellant on 28.02.2018, resulting in dismissal of the suit for non-prosecution.

12. The explanation subsequently offered by the Appellant primarily rests upon withdrawal of the vakalatnama by his former counsel and the engagement of a new Advocate. However, the duty to diligently pursue proceedings instituted by a litigant cannot, in all circumstances, be attributed exclusively to counsel. A litigant is equally expected to remain vigilant

regarding the progress and fixation of his case. In the present matter, the Appellant had instituted the suit in 2007 and it remained pending for a considerable period. Following withdrawal of the earlier counsel, it was incumbent upon him to ascertain the status of the proceedings and ensure their proper prosecution.

13. Another relevant circumstance is that the restoration application was not presented immediately following dismissal of the suit. The Appellant asserted that he acquired knowledge of the dismissal in May 2018, yet the application for restoration was accompanied by an application under Section 5 of the Limitation Act. The learned Single Judge examined the explanation furnished in support of the delay and found it inadequate. The impugned order specifically notes that the principal justification advanced was the withdrawal of the previous counsel's vakalatnama and subsequent engagement of another Advocate, which, in the view of the learned Single Judge, did not sufficiently account for the entire period of delay.

14. The fact that the Appellant pursued other proceedings concerning the subject matter does not, by itself, satisfactorily account for his failure to prosecute the suit when it was fixed for hearing. Although a contempt application was filed in May 2018 alleging violation of orders concerning the subject property, pursuit of such independent proceedings cannot, without more, constitute sufficient cause either for non-appearance in the main suit or for the delay in seeking its restoration. What was required was a satisfactory explanation covering the relevant period and demonstrating circumstances constituting sufficient cause. The learned Single Judge found that the Appellant had failed to meet that requirement.

15. We are conscious of the settled principle that, ordinarily, a *lis* ought to be adjudicated on merits rather than terminated solely on account of a procedural default. Such principle, however, does not dispense with the statutory requirement of limitation or the necessity of establishing sufficient cause. The power to condone delay is discretionary and must be exercised

upon proper consideration of the explanation furnished by the party seeking such indulgence. In the present case, the learned Single Judge considered the material placed before him and declined to exercise the discretion in favour of the Appellant.

16. We have also examined the grounds urged in the present appeal. They substantially reiterate the circumstances already placed before the learned Single Judge, namely, withdrawal of the previous counsel, engagement of another Advocate, alleged lack of knowledge regarding fixation of the matter and subsequent knowledge of its dismissal. No material has been brought to our notice demonstrating that the learned Single Judge overlooked any material circumstance or exercised his discretion in an arbitrary, capricious or unlawful manner. A mere assertion that the absence was neither intentional nor deliberate, without adequately accounting for the period of delay, cannot by itself constitute sufficient cause for condonation.

17. The Appellant's case must, therefore, be assessed in light of the conduct reflected from the proceedings before the learned Single Judge. The jurisdiction to restore a suit dismissed for non-prosecution is intended to provide relief where sufficient cause is established for the non-appearance. It cannot be invoked as a matter of course where the party seeking restoration has failed to satisfactorily account for his conduct and the delay in approaching the Court.

18. We have also considered the submission that the dispute ought to be adjudicated on merits and that the Appellant should not suffer for the absence of his counsel. The issue, however, is not confined to whether the absence was intentional; the material question is whether the explanation furnished constitutes sufficient cause for the non-appearance as well as the delay in seeking restoration. Upon consideration of the circumstances available on record, we find no sufficient cause warranting interference with the discretion exercised by the learned Single Judge.

19. In the circumstances, we are of the view that the learned Single Judge duly considered the material before him and

correctly found that the Appellant had failed to establish sufficient cause for condonation of delay. The conclusion reached on the basis of the record and the explanation furnished does not suffer from any illegality, irregularity or misreading of evidence or material warranting interference in appellate jurisdiction.

20. For the foregoing reasons, we find no merit in the present appeal. The impugned order dated 05.08.2024 does not warrant interference. The learned Single Judge was justified in declining to condone the delay and, consequently, in dismissing the application under Order IX Rule 9 read with Section 151 CPC seeking restoration of Suit No.1416 of 2007. Accordingly, the present High Court Appeal is **dismissed** in limine. The impugned order dated 05.08.2024 passed by the learned Single Judge in Suit No.1416 of 2007 is **maintained**, with all consequential effects.

JUDGE

JUDGE

KAMRAN/PS