HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

R.A No.224 of 1987

[Muhammad Usman and Others vs. Government of Sindh and Others]

---

1. For hearing of application for condonation of delay
2. For hearing of application for restoration

Applicants by	:	Muhammad Usman & Others **By Mr. Sunder Das advocate**
Private respondents	:	Orangzeb and Others **None present**
Official respondents	:	Government of Sindh and Others **By Mr. Wali Muhammad Jamari Assistant** A.G Sindh a/w Assistant Tando Ghulam Hyder [Ghulam Sarwar] and Mukhtiarkar Tando Ghulam Hyder [Shamsuddin Mughal]
Date of hearing	:	23.09.2026
Date of decision	:	23.09.2026

O R D E R

***

JAWAD AKBAR SARWANA J:- The applicant claims to be the legal heir of one of the four plaintiffs, who, in their lifetime, filed a civil suit in the year 1979, which was dismissed by the two lower forums at the trial and appellate stage. Thereafter, when the plaintiffs/appellants filed this revision in 1987, it was dismissed for non-prosecution on 20.10.2000. The applicant, claiming to be one of the legal heirs of the applicant/plaintiff no.1, Muhammad Usman, in 2004/2025 (further explained hereinbelow), filed (a) CMA No.1897/2026 (urgency); (b) CMA No.1887/25 (application under Section 5, Limitation Act, 1908); and (c) CMA No.1888/2025 (application under Order 41 Rule 19 read with Section 151 CPC). The Order passed today decides applications (b) and (c) above.

2. On the last date of hearing, while application (a) was allowed, notices were issued to the respondents on applications (b) and (c). Today, the Assistant Commissioner and Mukhtiarkar Tando Ghulam Hyder appeared on behalf of the Deputy Commissioner, Tando Muhammad Khan, and filed their Written Statement/Comments. After Counsel for the legal heirs of the applicant/plaintiff no.1 waived notice, the same has been taken on record subject to all just exceptions.

3. No one is present on behalf of the private respondents/defendants, and no intimation has been received on their behalf.

4. The background of the revision/lis is that Muhammad Usman (applicant No.1), Aftab Ahmed (applicant No.2), Mst. Shahar Bano (applicant No.3) and Mst. Afroze (applicant No.4), all plaintiffs and children of Allah Bachayo Vehyah, filed

F.C. Suit No.469 of 1979, before the Senior Civil Judge, Tando Muhammad Khan ("the trial Court"). At the time, the aforementioned four (4) plaintiffs impleaded two (2) official defendants and four (4) private defendants as parties in the above mentioned suit, appeal and this revision, namely Aurangzeb [Orangzeb] s/o Muhammad Bux Bhatti (respondent no.3/defendant no.3), Muhammad Pariyal s/o Pir Bux Bhatti (respondent no.3/defendant no.3), Abdullah s/o Muhammad Bux Bhatti (respondent no.5/defendant no.5), and Nabi Bux s/o Ghulam Mohammad Bhatti (respondent no.6/defendant no.6). After recording evidence and hearing arguments, the trial Court dismissed the suit, vide judgment dated 17.11.1985, followed by decree dated 28.11.1985, concluding that the four (4) plaintiffs failed to show that they are/were allegedly owners of the land bearing S.No.198, 265, 269, 270, and 271 situated in Deh Tando Ghulam Hyder Mohd. Khan, Taluka Tando Muhammad Khan (admeasuring 23 acres ("the Suit Property"), being apparently the property of their ancestors, namely, their father Allah Bachayo Vehyah, and his brother (their Uncle/Cha-cha) and Muhammad Siddique – both sons of Mohd. Usman. Additionally, the trial Court found the suit barred by time under Article 120 of the Limitation Act, 1908. The applicants/plaintiffs thereafter preferred Civil Appeal No.223 of 1985 before the IInd Additional District Judge, Hyderabad ("the appellate Court"). Once again, after hearing the parties, the appellate Court upheld the trial Court's dismissal judgment and dismissed the appeal with no order as to costs, vide appellate judgment dated 13.05.1987 and decree dated 20.05.1987. Aggrieved by the said appellate judgment and decree, the applicants/plaintiffs preferred the present revision before this Court on 12.08.1987. However, thirteen (13) years later from the date of institution of the revision, this (High) Court, vide Order dated 20.10.2000, after recording counsel's submissions, dismissed the revision for non-prosecution in the following terms:

> "that since long the applicants have not contracted him [their Counsel] inspite of repeated notices having been served upon them. The record reveals that the intimation notices were also sent by this Court but the notices have not been responded. Even today they are not in attendance. It appears that the parties have lost interest. The Revision Application is dismissed."

5. After about four (4) years of the dismissal of the revision (20.10.2000), on 25.08.2024, the legal heirs of the applicant no.1 (Muhammad Usman) engaged present Counsel. As per the Vakalatnama (and record), Counsel entered appearance on behalf of five of the six legal heirs of applicant/plaintiff no.1 in the year 2024 only. As per the applications (a), (b) and (c) available on record, the same was filed on behalf of five (5) legal heirs but without affidavit(s). The affidavit in support of the applications (a), (b) and (c) was filed after lapse of one (1) year on 25.08.2025 by only one of the legal heirs of the applicant no.1 (Muhammad Usman), namely his son, Ahmed Khan. Thereafter, the above-mentioned application nos. (a), (b) and (c), were assigned a 2025 docket number in August 2025 and placed for orders. None of applicant nos. 2, 3 and 4/plaintiff nos.

2, 3 and 4 have filed any application to restore the revision after its dismissal. Only the LR of applicant no. 1/plaintiff no. 1 has stepped forward.

6. As per the affidavit in support of the applications, and submissions of Counsel, applicant No.1 Muhammad Usman had expired in the year 1996 and other applicants also expired subsequently. The 4/5 years delay in filing the applications (b) and (c) is expressed in paragraphs No.3 to 10 of the accompanying affidavit, the contents of which is reproduced hereunder:

> *"3. That my father, uncle and grandmother filed above revision before this Honourable court. That in life time my father Muhammad Usman look after and pursue the matter and we legal heirs had no knowledge of the affairs of the case pending before this Honourable Court.*
> *4. That my father Muhammad Usman s/o Allah Bachayo died on 12.07.1996 and left behind following legal heirs. Copy of death certificate is filed as annexure-A.*
> *i) Muhammad Siddique*
> *ii) Muhammad Khan*
> *iii) Allah Bachayo*
> *iv) Juma Khan alias Ghulam Mustafa*
> *v) Muhammad Hafiz vi) Ahmed Khan*
> *5. That later on Juma Khan died in 1996.*
> *6. That the applicants had no knowledge of dismissal order dated 20.10.2000.*
> *7. That thereafter Aftab Ahmed and other applicants also died.*
> *8. That applicant Muhammad Usman was died in 1996 therefore he was not in contact with the counsel and that reason the revision was dismissed in default. It is pertinent to mention that prior to order dated 20.10.2000 the main reason for not contacting the counsel that legal heirs of applicants had no knowledge of dismissal of revision in non-prosecution.*
> *9. That applicants legal heirs had first time knowledge of order of court when Mukhtiarkar Taluka Tando Ghulam Hyder claim to be land of government land and informed that revision filed by father of applicant was dismissed.*
> *10. That non appearance of applicants (dead persons) on the date of hearing was neither willful nor deliberate but due to above said circumstances."*

7. The LR of applicant no.1 has contended that Muhammad Usman and one of his sons (brother) passed away in 1996, and that, in the circumstances, they had no knowledge of the revision and/or its subsequent dismissal as on 20.10.2000. Yet this does not explain the delay in filing of the restoration application by the remaining legal heirs of applicant no.1 (Late Muhammad Usman). Counsel for five of the six LRs of applicant no.1 has not made any submission explaining the delay in filing the restoration application on behalf of the LRs of Muhammad Usman. Indeed, counsel for Muhammad Usman's submissions in the year 2000 are on record, and he neither submitted that Muhammad Usman had passed away nor that he did not represent the remaining appellants/plaintiffs in the revision in the year 2000. Even if it is presumed that applicant no. 1/plaintiff no. 1 had passed away earlier, the record reflects that counsel for the applicants/plaintiffs continued to plead for applicants/plaintiffs nos. 2, 3 and 4. Indeed, the affidavit is also completely silent on this point concerning the binding role of Counsel for the four applicants as pleader and its consequences. Further, the LRs of Muhammad

Usman also did not state positively that applicant nos. 2, 3 and 4/plaintiffs nos. 2, 3 and 4 had all expired as on 20.10.2000, when the revision was dismissed. Indeed, even if applicant No. 1 had passed away in 1996, the legal heirs of the applicant/plaintiff were still alive; further, applicant/plaintiff Nos. 2,3 and 4 were also alive. Yet, none came forward to set aside the dismissal order of the restoration, and vested rights have accrued to the parties, notwithstanding the public respondents' statements filed today that the Suit Property has been assigned to others (public and private actors) who have also acquired rights due to the indolent conduct of the applicant (viz. filing this application for restoration, even assuming that it has any right(s) on merits after more than three (3) years from the date of the dismissal order of this Revision.

8. No ground is made out demonstrating "sufficient cause" to set aside the order of dismissal of the revision application filed after a gap of more than 4/5 years. As per the judgment of the Supreme Court reported in 2023 SCMR 485, a period of three years has been allowed for restoration of a revision application, but in the instant case, the restoration application is instituted after almost 4/5 years with no explanation for each and every date of delay. In the facts and circumstances, applications (b) and (c) are hopelessly time-barred and are hereby dismissed with no order as to costs. The order of dismissal of this revision dated 20.10.2000 is sustained.

JUDGE

Sajjad Ali Jessar