

## ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

**Suit No.818 of 2010**

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DATEORDER WITH SIGNATURE OF JUDGE

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For orders on CMA Nos:-

1. 15428/17 (U/S 5 Limitation Act, 1908)
2. 15429/17 (U/O IX Rule 4 CPC)

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**30.11.2017.**

Mr. Daniel Baksh, Advocate for the Plaintiff.  

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1-2. Through Applications at Serial No.1, the Plaintiff seeks condonation of delay in filing of Application at Serial No.2, which is an application for recalling of Order dated 11.08.2017, whereby, instant Suit was dismissed for non-prosecution. Learned Counsel for the Plaintiff submits that earlier Advocate representing the Plaintiff never informed the Plaintiff about the instant proceedings and even the dismissal of Suit for non-prosecution was communicated after a delay of 86 days, hence it is a fit case for recalling of order of dismissal for non-prosecution. He submits that a litigant must not suffer or penalized for the act of a Counsel.

I have heard the learned Counsel and perused the record. It appears that on 12.05.2014 an order was passed by this Court, whereby, objection was raised regarding maintainability of instant Suit before this Court for want of pecuniary jurisdiction. Thereafter from 25.10.2016 onwards none affected appearance before the Court, whereas, the matter was listed for at least five times and as an indulgence it was adjourned. Finally, on 11.08.2017, the same was dismissed due to lack of interest on behalf of the Plaintiff. I do not see

any reason to recall the order of dismissal of instant Suit. Moreover, the question that the earlier Counsel never communicated the order of dismissal or never informed about the proceedings and its status, it may be observed that the same is a matter between the Plaintiff and his Counsel and for that the Plaintiff is at liberty to seek appropriate remedy but that cannot be termed as a justifiable ground for recalling the order of dismissal through an application filed by engaging another Counsel. In my view the plaintiff himself ought to have been vigilant to pursue his matter. The Hon'ble Supreme Court in the case of **Zulfiqar Ali v Lal Din & another (1974 SCMR 162)** has dealt with this question and has been pleased to observe as under;

“The mere fact that litigant has engaged a Counsel to appear on his behalf does not absolve him of all responsibilities. It was as much as his duty as that of the learned Counsel engaged by him to see that the appeal was properly and diligently prosecuted. If he engaged a Counsel who was lacking in his sense of responsibility to the Court, it is he who should suffer and not the other side.”

In view of such position, both these applications are dismissed.

J U D G E

Avaz P.S.