

# IN THE HIGH COURT OF SINDH, KARACHI

## **Ex. No. 32 of 2010**

[Muhammad Akram Awan v. Afzal Habib]

Present:

Mr. Justice Zulfiqar Ahmad Khan

Decree holder : In person  
Judgment debtor : Through Mr. Muhammad Ilyas Khan  
Tanoli, Advocate  
Date of Order : 28.09.2018  
Date of Announcement : 15.11.2018

### **ORDER**

**Zulfiqar Ahmad Khan, J:-** This single order will dispose of CMA No.182 of 2017 as well as CMA No.162 of 2017. The instant execution application was filed on 07.08.2010 and notices were issued to the Judgment debtor on 26.05.2010 in the presence of the Decree holder, who chose to proceed with the matter on his own. Decree holder was also present on 08.06.2010, 16.06.2010, 22.06.2010, 25.06.2010, 21.07.2010, 24.08.2010, 23.09.2010, 13.10.2010, 28.10.2010 (however none was present for the parties on 07.12.2010), he was also present on 28.02.2011, 09.03.2011, 17.03.2011, 22.03.2011, 25.03.2011, 07.04.2011, 11.04.2011, 19.04.2011. On 02.05.2012 when the Decree holder was absent, intimation notice was directed to be issued to him. None was present on the next date of hearing being 06.08.2012 as well as on 18.05.2015. Also no one appeared on 17.08.2015, when Court was informed through Bailiff that notice sent to the Decree holder could not be served as some parida nasheen lady informed the Bailiff that the Decree holder has gone to Lahore. Notices were repeated through the said order for 18.05.2015. As none was

present on 30.11.2015, the matter was adjourned on that date, however, the matter was taken up on 25.01.2016, having observed that no one was present, directions were given to issue intimation notice to the Decree holder for the next date of hearing, however with a note of caution that if none appears on the next date, the matter would be dismissed for non-prosecution. None was present on 24.02.2016 also, however the Court observed from the Bailiff report that the notice was not served at the given address as Decree holder was reported to be out of station. Since prior notice dated 17.08.2015 also met with the same fate, where a parda nasheen lady informed the Bailiff that the Decree holder was out of station, Court assuming that the Decree holder was not interested in proceeding with the execution application, dismissed it on account of non-prosecution.

2. Having come to know about the said dismissal on account of non-prosecution, the Decree holder moved CMA No.162 of 2017, a perusal of which shows that the Decree holder has alleged that since he was receiving life threats from the Judgment debtor, he left Karachi. He has also requested that his case be heard on daily basis. Since the Decree holder was appearing in person, he was advised to file an application for condonation of delay, for which he sought time on 11.04.2017, whereafter CMA No.182 of 2017 was filed through which delay of 411 days is sought to be condoned. The Decree holder present in person states that on account of serious life threats emanating from the Judgment debtor, he had to leave Karachi and confined himself to Mansehra, where he had no resources to communicate with this Court.

3. Learned counsel for the Judgment debtor by placing reliance on Article 163 of the Limitation Act, 1809 contended that the Decree holder

could have moved an application for setting aside the dismissal order within 30 days from the date of the order and since the instant restoration application is filed with a delay of 411 days, under Article 163 of the Limitation Act, the said application fails on merits. When posed with a question that a bare reading of said Article clearly suggests that it is applicable to “plaintiffs” and too only in cases where orders for setting aside of dismissal on default of appearance or for failure to pay costs of service of process or to furnish security for costs has occasioned, and none of these circumstances are prevalent in the case at hand, learned counsel candidly admitted that Limitation Act, 1908 does not prescribe any time limit to file an application for restoration of an execution application dismissed on account of non-prosecution, however admitted that under Article 181, a period of 3 years is provided for catchall cases where no limitation is prescribed by the Act 1908. He next argued that the Decree holder has to show cause and justification of each and every day’s delay. In support of his contention, the learned counsel placed reliance on 1989 CLC Karachi 656 [Sabzal and others v. Bingo and others], PLD 2000 Karachi 46 [Habib Bank Ltd. v. Premifar (Pakistan) Ltd and 5 others], 2006 SCMR 631 [Shahid Pervaiz alias Shahid Hameed v. Muhammad Ahmad Ameen], 2012 CLC 229 [Messers United Bank Limited through Attorneys and 2 others v. Messers Plastic Pack (Pvt.) Limited], PLD 1985 Karachi 60 [Messers National Bank of Pakistan v. Mst. Perveen Akhtar] and 2013 MLD 1132 [Engr. Inam Ahmad Osmani v. Federation of Pakistan and others].

4. Heard the parties and perused the record.

5. While a review of the diary sheet as summarized in the foregoing shows that the Decree holder has been vigilant in proceeding with his application regularly, and except for the occasions highlighted therein, he

was present in the Court, his assertions that the Judgment debtor threatened him of dire consequences, forcing him to leave Karachi to take shelter in Mansehra, does not appear to be farfetched, particularly recalling the law and order situation in the city in these stipulated periods. Clearly, there is no statutory time-limit for filing a restoration application if an execution application is dismissed on account of non-prosecution and Court has inherent powers under Section 151 CPC to make such orders as may be necessary to meet the ends of justice, and to ensure that no abuse of the process of the Court takes place, particularly when Article 181 of the Limitation Act stretches limitation of doing an act for which no period of limitation is provided to a term of 3 years, and the instant restoration application filed within this period, as well as being cognizant of the legal principle that rights of Decree holder cannot be denied in particular circumstances when notices issued to him remained un-served upon him and were only received by a parda nasheen lady, I am inclined to allow these applications, while noting that all the case laws, cited by the learned counsel for the Judgment debtor, are distinguishable.

6. Consequently, the instant execution application is restored to the stage it was so dismissed on 24.02.2016.

JUDGE