

IN THE HIGH COURT OF SINDH AT KARACHI

Suit 393 of 2005 : Tahir Rafi & Another vs. Shahla Khurram
For the Defendant : Mr. Mushtaq A. Memon, Advocate
Mr. Shahid Ansari, Advocate
Date of hearing : 02.09.2020
Date of announcement : 02.09.2020

ORDER

Agha Faisal, J. Learned counsel for the defendant draws attention to order dated 20.12.2018 to demonstrate the continual absence of the plaintiffs and further to show that the plaintiffs' counsel had pleaded no instructions. The subsequent order dated 06.02.2019 observes similarly and cautions that unless the plaintiff is present on the next date of hearing the suit will be dismissed for non-prosecution, as observed vide the earlier order. The order dated 26.02.2019 once again demonstrates the absence of the plaintiffs and so do the orders dated 23.10.2019 and 04.03.2019 that follow. On 26.08.2020, Mr. Faizan Memon, Advocate appeared and once again pleaded no instructions to proceed in the matter and therefore in the interest of justice notice was issued directly to the plaintiffs for today. The situation remains same today and Mr. Faizan Memon, Advocate has reiterated no instructions.

2. This suit was instituted on 22.03.2005. The pleadings are on record and the matter is being listed repeatedly *inter alia* for taking of evidence¹, however, the plaintiffs remained absent without intimation and / or justification. On the last date of hearing notice² was directed to be issued for a fixed date³ of hearing⁴, being today, however, the plaintiffs have failed to appear and proceed.

3. In view hereof, this Court is constrained to hereby dismiss this suit, along with pending application/s (if any), for non-prosecution⁵.

J U D G E

¹ *Sher Muhammad vs. Ahmad Khan* reported as 2004 CLC 1016; *Abid Mahmood vs. Abdul Aziz* reported as 2003 YLR 3196; *Kh. Ghulam Qadir vs. Muhammad Sharif* reported as 2000 MLD 2047; *Qaim Ali Khan vs. Muhammad Siddique* reported as 1987 SCMR 733; *Manager Jammu & Kashmir State Property in Pakistan vs. Khuda Yar* reported as PLD 1975 Supreme Court 678.

² *Allied Group Ventures Limited vs. Quality Vision (Private) Limited* reported as PLD 2002 Lahore 274.

³ *Per Nasim Hasan Shah J. in Nowsheri Khan vs. Said Ahmed Shah* reported as 1983 SCMR 1092.

⁴ *Per Muhammad Ali Mazhar J. in Muhammad Naeem vs. KA Bashir* reported as 2010 CLC 1039; *Govt. of Sindh vs. Muslim Educational Society* reported as 1991 CLC 1766; Order XIV Rule 1(5) Code of Civil Procedure 1908

⁵ Order IX Rules 3 & 8 read with Order XVII Rule 2 of the Code of Civil Procedure 1908; *Muhammad Naeem vs. KA Bashir* reported as 2010 CLC 1039; *Ciba Geigy (Pakistan) Limited vs. Muhammad Safdar* reported as 1995 CLC 461; *Haji Muhammad Sharif vs. Settlement & Rehabilitation Commissioner* reported as 1975 SCMR 86; *Zulfiqar Ali vs. Lal Din* reported as 1974 SCMR 162.