

Order Sheet  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD

FRA No. 82 of 1985

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DATE	ORDER WITH SIGNATURE OF JUDGE
09.10.2020	

For orders on office objection  
For hearing of MA 902/10

Mr. Irfan Ahmed Qureshi, Advocate for the appellant.

Mr. Najafdin, Advocate holding brief for Mr. Suresh Kumar, Advocate for Respondent No.3 along with respondent No.3.

In this First Rent Appeal one of the disputes is with regard to ownership of property for which a suit was decreed. The Appeal filed against it was also allowed, hence Revision Application bearing No. 265 of 1994 was filed. And, on 28.9.1998, instant First Rent Appeal was ordered to be fixed along with above specified Revision Application.

Record reflects that on 24.9.1999, only this FRA was fixed in court despite clear order that both the matters shall be fixed together. And, since no one was present on behalf of the Appellant, the instant FRA was dismissed for non-prosecution. Subsequently, after 11 years i.e. on 16.9.2010, the Appellant moved an application under Order 9, Rule 3 & 4 read with Section 151 CPC for restoration of FRA and recalling of order dated 24.9.1999. The Application was supported by Affidavit of counsel for Appellant wherein, it was stated that after passing of the above order, the cases were not fixed in cause list for long time. Hence, the Appellant complained / inquired from the office about fixation of the cases but, according to office the files were misplaced. Later, file of FRA was located but, file of R.A. No. 265 of 1994 was not traceable. Therefore, the matter was placed before Hon'ble Senior Sitting Judge of this Court, who vide order dated 17.8.2010 ordered for reconstitution of case file of RA No. 265 of 1994 with directions for disciplinary action against the delinquent official. Hence, the restoration application.

Learned counsel submits that since vide order dated 28.9.1998 this FRA was ordered to be fixed along with RA No. 265 of 1994, therefore, fixation of this FRA only on 24.9.1999 is violative of the above order; that the

concerned clerk had deliberately misplaced the files for which inquiry was conducted and action was taken against him. He lastly prayed for restoration of this FRA in the interest of justice.

Mr. Najaf-u-din, Advocate who is an Associate of Mr. Jhamat Jethanand, Advocate submits that the restoration application is time barred as the same has been filed after a delay of about 10 years.

I have gone through the Counter Affidavit filed on behalf of Respondent No.3 who has controverted the allegations leveled in the restoration application and prayed for dismissal of the application under Order 9 Rule 3 & 4 r/w Section 151 CPC. Prima facie the grounds agitated by him are not tenable under the law for the simple reason that this court vide order dated 28.9.1998 ordered that the Revision Application No. 265 of 1994 be heard with the aforesaid FRA. However, when the matter was taken up on 24.9.1999 none appeared on behalf of the parties and the matter was dismissed for `non-prosecution`. The said factum of pendency of Revision Application was not brought to the notice of this court.

I have perused the record which explicitly shows that the matter was inadvertently dismissed on account of `non-prosecution` though it should have been decided on merits along with Revision Application. It is well-settled law that law favours adjudication of cases on merits, non-suiting of a party on mere technicalities could not be approved. On the aforesaid proposition I am fortified by the decision rendered by the Hon'ble Supreme Court in the case of Anwar Khan v. Abdul Fazal Mannan (2010 SCMR 973).

In view of the facts and circumstances discussed above, I am of the view that sufficient cause has been shown for restoration of this F.R.A., which is hereby restored to its original position for decision on merits.

Office is directed to fix this FRA along with Revision Application No. 265 of 1994 as per roster.

JUDGE