

**Order Sheet**  
**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**Civil Revision No.S- 56 of 2009**

Date of hearing	Order with signature of Judge.
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**Application in d/o case**

- 1.For orders on CMA 1278/21
- 2.For orders on CMA 1279/21

**20-12-2021**

Mr. Safdar Ali Bhatti, Advocate for the Applicants.

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1. Urgency granted.
  
2. This application has been filed for recalling of order dated 15.11.2021, whereby, this Civil Revision was dismissed for Non-Prosecution. Counsel for the Applicants now engaged, submits that the earlier Counsel of the Applicants had expired; hence, matter could not be pursued diligently; whereas, subsequently, hearing notice was received by the Applicants for 30.09.2021; however, matter was discharged. According to him, after that Applicants were awaiting another hearing notice which was never issued and the matter was dismissed for Non-prosecution; hence this Application.

I have heard the learned Counsel for the Applicants and perused the record. It appears that on 08.02.2021, this Court was informed that Mr. Ghulam Shabir Dayo, representing the Applicants had expired; thereafter notice was repeated upon the Applicants vide orders dated 01.03.2021 and 05.04.2021; whereas on 27.08.2021, once again notice was repeated upon the Applicants and as per office note, Applicant No.1 (i) was duly served on his behalf and on behalf of other Applicants being attorney, for 30.9.2021. On such date the matter was discharged. Subsequently, matter was fixed on 15.11.2021, when the following order was passed:

“None present on behalf of the Applicants nor any intimation is received. Record reflects that Applicants’ Counsel has since expired and thereafter nobody has turned up and time and again notices were repeated upon the Applicants. As per office note, process notices have duly been served upon the Applicant No.1, who is also attorney of other Applicants. Since nobody has turned up and this matter is pending since 2009; therefore, conduct of the Applicants reflects that they are

not interested in proceeding with this matter. Accordingly, this Civil Revision Application stands **dismissed for Non-Prosecution** with pending application”.

The only argument which has now been raised is that on 30.09.2021, the Applicant No.1(i) was present; but since the matter was discharged, he left the Court and was awaiting another notice. Such argument is misconceived inasmuch as it was the responsibility of the Applicants to immediately engage a Counsel and bring his vakalatnama on record, once he was duly served in the matter pertaining to the year 2009. The Counsel earlier representing the Applicants had expired, and in fact it was incumbent upon them to be vigilant and engage another Counsel; rather than waiting for the Court to hunt them. This revision Application has been filed by the Applicants and it is for them to pursue it with utmost care and vigilance. It is not upon the Court to keep sending notices to the Applicants, notwithstanding that whether they are served or not in a matter which has been initiated at the behest of the Applicants. Nonetheless, here admittedly, the Applicants were duly served through court notice which in fact was not even mandatory; but was issued as a matter of courtesy and to meet the ends of justice. Any negligence on the part of the Applicants herein cannot benefit them with a plea that a subsequent notice was also mandatory. The relief of restoration is dependent upon showing a good and sufficient cause for absence<sup>1</sup>. The Hon’ble Supreme Court in the case of *Zulfiqar Ali v Lal Din & another (1974 SCMR 162)* 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.” therefore, no case for indulgence is made”.

In view of hereinabove facts and circumstances of this case no case for indulgence or exercising any discretion is made out, therefore, the Application being misconceived is hereby **dismissed**.

**JUDGE**

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<sup>1</sup> Adnan Trading Company v Appellate Tribunal Customs, Excise and Sales Tax (2011 SCMR 1535)

Ahmad