

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No.S-246 of 2021

Nadir Khan
Versus
Mst. Fareeda Nadir & another

Date	Order with signature of Judge
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1. For orders on CMA 1631/21
2. For orders on office objection No.14 as at 'A'
3. For orders on CMA 1632/21
4. For hearing of main case
5. For orders on CMA 1633/21

Dated: 26.03.2021

Mr. Atta Muhammad Khan for petitioner.

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Urgency granted.

This petition is in respect of an order of Family Judge-IV, Karachi West whereby application for restoration of execution application was allowed.

Facts of the case are that Family Judge-IV Karachi West was seized of execution application, which was pending, however on 28.11.2015 it was dismissed for non-prosecution. An application under order IX rule 9 read with Section 151 CPC was filed by decree holder/ respondent on 10.02.2020 and notices were issued to judgment debtor/ petitioner who did not respond despite issuance of notices and service. Subsequently he appeared and on 12.01.2021 counsel for parties were heard and the application was allowed.

The only objection of the petitioner's counsel was that he was not provided an opportunity to file objections to the application.

In this regard the diary sheets of the executing Court reveals that notices were issued on 10.02.2020 in respect of restoration application and petitioner did not bother to file reply/counter affidavit/objections to the restoration application till the time it was allowed and the execution was restored.

The petitioner has directly filed this petition in respect of an order of restoration of the execution application. Although the discretion was exercised by the Family Judge in considering the application for restoration and delay has been condoned however there is no lawful way under the law that such discretion of facts could be taken into consideration by this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Hence such discretion exercised by the execution Court i.e. Family Judge-IV Karachi West cannot be disturbed by this Court in a case wherein lis under article 199 of the Constitution was filed. In the circumstances, I am of the view that such discretion was exercised in accordance with law and no indulgence as such is required in the instant proceedings. Accordingly, the petition is dismissed along with listed applications.

Judge