

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 210 of 2010

(Roshan Ali & others v. Din Muhammad & others)

Date of Hearing: **16-05-2022**

Date of Judgment: **16-05-2022**

Syed Jaffar Ali Shah, Advocate for the Applicants.
Mr. Shahid Hussain Gopang, Advocate for the Respondent No.1.
Mr. Mehboob Ali Wassan, Assistant Attorney General-Sindh.

ORDER

Muhammad Junaid Ghaffar, J. – Through this Civil Revision, the Applicants have impugned Order 27.08.2010, passed by 3rd Additional District Judge, Khairpur in Civil Misc. Appeal No.02 of 2010 (**Roshan Ali and another v. Din Muhammad and others**), whereby, Civil Misc. Appeal has been dismissed and the Order dated 08.12.2001, passed by 1st Senior Civil Judge, Khairpur on an application under Order 9 Rule 9 CPC has been maintained, through which the application filed on behalf of the Applicants was dismissed.

2. I have heard learned Counsel for the parties and perused the record.

3. It appears that the Applicants had filed an application under Section 12(2) CPC against Judgment and Decree dated 31.03.1993 and 05.04.1993 respectively. Said application was dismissed and thereafter repeatedly the restoration applications were filed not once, or twice, but thrice and the Trial Court finally passed the Order in question, which reads as under:

“I have gone through the R&Ps of the present matter which was filed before this Court on 9.10.95.

It appears that the application U/S 12(2) CPC which was subsequently dismissed for non prosecution on 30.11.1996 and thereafter the learned counsel for the applicants filed restoration application U/O 9 R 9 CPC which was unfortunately also dismissed for non prosecution on 14.3.98 and again one another restoration application for restoring the earlier restoration application was also dismissed for non prosecution and the present application is 3rd application for restoration of previous two applications which were filed for the restoration of main application U/S 12(2) CPC. The perusal of

the case diaries shows that the applicants have shown a slackness on their part because time and again their applications were being dismissed for non prosecution either on the ground of their absence or due to non payment of costs for issuing notices to the opponents. It also worth consideration to mention here that the main application U/S 12(2) CPC pertains to year 1995 and right from the year 1995 the applicants have not been able to pursue their main application as well as subsequent applications which were for the restoration of main application and even they could not get the opponents served by pursuing their matter effectively. In respect of the present application as per perusal of record the applicants have also been found irresponsible andbe served up to this time, and even the applicant appears to have list their interest to pursue the application which is for the restoration of restoration application. In other words I can say that there is a chain of restoration applications and it will...if the same is allowed because the previous conduct of the applicants shows that they have not been vigilant to pursue their main application as well as subsequent applications.

In view of the above facts and circumstances, I have come to the conclusion that the present application merits no consideration and the same is hereby dismissed with no order as to the costs”.

4. Being aggrieved, the Applicants preferred Appeal and the learned Appellate Court has passed the following Order:

“Heard both parties counsel and have perused the record.

Pursuant of impugned order dated 8-12-2001 so passed by I-Senior Civil Judge, Khairpur transpires that Civil Misc: Application of 1995 re-Roshan Ali and others VS Din Muhammad and others was dismissed in default due to non-prosecution, under order dated 8-12-2001, besides the applications of the appellant/applicants were already dismissed thrice. It further provides that the conduct of appellants was just to prolong the matter, they were neither interested nor vigilant.

Perusal of first application of appellant/applicants reflects that matter was dismissed in default due to non-prosecution on 30-12-1996, application U/O IX Rule 9 RWS 151 CPC alongwith accompanying affidavit of Ghulam Akbar; the second application was filed on 28-12-1996, wherein on oath he stated that matter was fixed on 30-11-1996 but their previous counsel did not inform them about date of hearing hence he and their previous counsel remained absent due to some unavoidable circumstances, hence impugned order was passed. He further taken plea that their non-appearance was not intentional but was only un-awareness of date of hearing. Perusal of grounds so furnished in said affidavit shows that the previous counsel for appellant/applicants had not filed his affidavit in support of the plea of the appellants, which appeared to be un-supported and un-reliable. The appellant/applicants would have been vigilant, as their valuable rights were involved. It is also strange to say that why their previous counsel without any reason did not appear before the court, thus their non-appearance was intentional.

Turning to the second time dismissal of the matter in default on 14-3-1998, the same appellant took plea that the matter was fixed for service on 14-3-1998 but dismissed due to non-prosecution and in non-payment of costs. He added that due to unavoidable circumstances, it

was not deposited and their non-appearance was neither intentional nor deliberate but which were the unavoidable circumstances, compelling them in non-deposit of the court fee that non appearance of them or their new Advocate shows that the appellant/applicants intended to keep the case live with mala fide intentions.

As per record again third time on 1-12-1999 matter was dismissed in default due to non-prosecution, application for restoration of matter was moved on the very day with affidavit of above appellant/deponent on the grounds that he was available in the court, but did not listen the call, hence matter was dismissed due to non-appearance. He further added that their non appearance was not intentional but due to non-awareness about the date of hearing. Thus he took two different pleas rendered both false, prima-facie he committed gross negligence. Accordingly impugned order needs not to be interfered. If the civil matters are treated lightly just to keep it pending alive without progress it would be against the justice, hence being agree with counsel for the respondents, impugned order dated 8-12-2001 stands upheld, resultantly appeal in hands is dismissed with no order as to costs”.

5. On perusal of aforesaid Orders, it appears that the conduct of the Applicants does not warrant any interference inasmuch as three applications for restoration were filed, one after the other, in respect of their dismissal again and again for non-prosecution. The conduct of the Applicants as noted in the above orders also appears to be contradictory and belied from the affidavits so filed along with applications. Per settled law, while seeking restoration of an order of dismissal on default, an aggrieved person has to show some justifiable cause for seeking the discretionary relief from the Court. The relief of restoration is dependent upon showing a good and sufficient cause for absence¹. In this matter, the Applicant has miserably failed to point out any such good cause; hence, not entitled for the relief of restoration.

6. In view of hereinabove facts and circumstances of this case, no case for indulgence is made out and this Civil Revision merits no consideration; hence the same is hereby **dismissed**.

JUDGE

Ahmad

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