

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**I.A.NO. 24 OF 2014**

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Date	Order with signature of Judge
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**21.8.2015**

Mr. Zubair Hashimi, Advocate for Appellant  
 Mr. Suleman Hudda, Advocate for Respondent No. 1  
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Through instant appeal, the appellant has impugned order dated 30.1.2014, whereby, application filed by the appellant Under Order IX Rule 9 read with Section 151 CPC, for recalling the order dated 18.2.2012 through which the Suit had been dismissed for Non Prosecution, has been dismissed.

Counsel for the appellant submits that absence of the appellant and his Counsel on 18.2.2012 was neither intentional nor deliberate, but due to oversight a wrong date of hearing was noted in the diary, hence, the appellant could not appear on 18.2.2012 for cross examination. Counsel further submits that even otherwise the last date of hearing i.e. 18.2.2012, was not given by the Court itself, but by the Reader of the Court, and in view of the Judgment(s) of the Hon'ble Supreme Court in the case of ***Abdul Latif and another vs Aqeel Ahmed [2006 SCMR 789]*** and ***Nowsheri Khan Vs Said Ahmad Shah [1983 SCMR 1092]*** the Suit could not have been dismissed on such date. Counsel prays that the Suit of the appellant be restored which shall be decided on merits.

Conversely, Counsel for the respondent Bank submits that ample opportunities were provided to the appellant, who has failed to lead any evidence, whereas the Suit had also been dismissed earlier on 6.7.2011, whereafter, it was restored to its original position, hence, per learned Counsel, the appeal merits no consideration and may be dismissed.

Perusal of the record reflects that the Suit of the plaintiff/appellant was fixed for cross examination on 6.7.2011 but the plaintiff/appellant remained absent on such date, without any intimation to the Court, and the Suit was dismissed for non prosecution, however, subsequently the same was restored vide order dated 10.11.2011 and was again fixed for cross examination.

The plaintiff/appellant again failed to adduce any evidence and choose to remain absent without any intimation and the Suit was dismissed for non-prosecution vide impugned order dated 18.2.2012. It further appears that the Suit of the appellant is pending for cross examination since 18.9.2009, whereas, the appellant has not pursued its case with any due diligence. The conduct of the appellant reflects that after having filed the Suit, the appellant does not seem to be interested in prosecuting the same. The Suit has been dismissed twice for appellant's non appearance in person for cross examination, whereas, such obligation is entirely on the appellant himself as the matter requires his cross examination before the Court. The appellant ought to have been vigilant as law favors who is vigilant and not an indolent and or a sluggish person.

Insofar as the contention of the Counsel for the appellant that since the last date of hearing, on which date the Suit was dismissed was not a date by the Court, but by the Reader, by placing reliance on the case of **Abdul Latif** and **Nowsheri Khan (Supra)** is concerned, the same appears to be misconceived, as the facts of the instant case are entirely on a different footing. In the case of **Abdul Latif Supra**, the case was fixed for appearance of respondents on which date the same was dismissed for Non-prosecution, and the Hon'ble Supreme Court while upholding the order of Lahore High Court, whereby the Suits of the respondents had been restored, held that both the terms cannot be equated as the "date of hearing" is something more than that of the "date of appearance". Similarly in the case of **Nowsheri Khan Supra**, the Hon'ble Supreme Court had restored the appeal pending before the District Judge, Malakand, which was dismissed for Non-prosecution, as in that case the appeal was fixed for the first time on 6.8.1976 before him and notice was ordered to respondent for 4.9.1976, and thereafter, the District Judge was on leave for a number of dates and the Reader of the Court had been adjourning the matter, when finally the matter was fixed on 16.9.1976, and the Presiding officer who was present on that date, had dismissed the appeal for Non-prosecution. We are afraid the ratio of both the aforesaid cases does not support the case of the appellant as the facts are entirely different in the instant matter. The appellant before us had been continuously seeking adjournments and had

failed to appear before the Court for his Cross examination, and for such reason the Suit was also dismissed for non-prosecution on 6.7.2011.

In view of hereinabove facts and circumstances of the instant case, we are of the view that instant appeal does not merits any consideration as the conduct of the appellant does not warrants exercise of any discretion in its favor. Accordingly, instant appeal is hereby dismissed in limine.

JUDGE

JUDGE