

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

M.A. No.05 of 2011.

DATE	ORDER WITH SIGNATURE OF JUDGE
	For hearing of M.A. No.339/2011. For hearing of main case.

26-10-2020

Mr. Aslam P. Sipio, advocate for appellant.

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This Miscellaneous Appeal is filed against an order of dismissal of an application under Order 41 Rule 19 CPC for re-admission of appeal. The appeal of the applicant / appellant was dismissed for non-prosecution on 23.07.2009 as he was habitual of being absent from proceedings. As a consequence of this dismissal for non-prosecution an application under Order 41 Rule 19 CPC was filed and the matter was fixed for hearing on 11.02.2011 when on account of repeated calls the advocate was found absent.

I have heard learned counsel and perused the material available on record. On the particular date when the application for re-admission of appeal was dismissed for non-prosecution the advocate informed the Reader of the Court that he was ready to proceed with the appeal and counsel for the respondent was informed accordingly. Why the matter was not heard at the same time it is not clear. Apparently on that particular date when the application for re-admission was fixed for hearing there was no fault of the appellant's counsel since he was ready to proceed. The Court infact waited for respondent and called matter again at 2.15 p.m. when the advocate for the appellant was called absent. He then perhaps by that time left an application for adjournment on the table of the Reader.

I am of the view that once the counsel for the appellant has appeared and stated that he was ready to proceed and the matter and was kept aside for respondents' counsel to be informed, there was no reason to penalize appellant

or his counsel. The matter was taken up at 2.30 p.m. when infact the Court time was over.

I cannot however ignore this fact that the appellant has also contributed in delaying this matter for its disposal on merits as a number of applications for adjournments were moved prior to dismissal of appeal (main) for non-prosecution on 23.07.2009. Be that as it may, at present the controversy before me is whether the dismissal of an application for the re-admission of appeal was justified and in accordance with law. I feel that since on the date when the application was dismissed the counsel for appellant was ready and it was observed by the Court itself, hence the dismissal of the application at 2.30 p.m. when the Court time is over doesn't seem to be justified. In all fairness it should have been adjourned to a date to enable the counsel to appear and proceed with the matter. An affidavit to this extent was also filed by the counsel which was also not taken into consideration.

The service upon respondent was affected through publication, after exhausting all modes of service. I therefore, deem it appropriate to allow this Miscellaneous Appeal and remand the case back to the Additional District Judge Shahdadpur for hearing of application for re-admission of appeal under Order 41 Rule 19 CPC. The Court may pass order after hearing the parties and /or their advocates in accordance with law. The appellant is not required to be served a notice of the pendency of the application and the Additional District Judge shall fix the hearing on 31.10.2020 after issuing notice to respondents.

JUDGE

Irfan Ali