

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
CIVIL REVISION APPLICATION No. **107** of **2005**

Date	Order with signature of Judge
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1. For hearing of C.M.A No. 575/2014 (*Under Sec. 5 of Limitation Act*)
2. For hearing of C.M.A No. 576/2014 (*Restoration Application*)
3. For hearing of C.M.A No. 351/2015 (*Stay Application*)

31.10.2022

Mr. Bakhshan Khan Mahar, Advocate for applicants
Mr. Sarfraz A. Akhund, Advocate for respondent

1. By means of this application, filed under Section 5 of the Limitation Act, 1908 ("**the Act**"), the applicants seek condonation of delay in filing of Restoration Application (*listed at No.2 above*).

Briefly stated, the facts of the case are that the applicants preferred this Civil Revision Application against the judgment and decree dated 31.05.2005 & 06.06.2005, respectively, whereby the learned Addl. District Judge, Kandiaro while dismissing Civil Appeal No. 56 of 2005 maintained the judgment and decree, dated 17.02.2005, thereby the learned 1ST Civil Judge, Kandiaro decreed the T. C. Suit No. 102 of 2000, filed by the respondent, and dismissed the T. C. Suit No. 29 of 2021, filed by the applicants. The civil revision was dismissed for non-prosecution by this Court, vide order dated 05.08.2013; thereafter, on 10.09.2014 after 13 months and 5 days, the applicants filed C.M.A No. 576/2014 for its restoration. The applicants considering their said restoration application as barred by time filed this application under section 5 of the Act for condonation of alleged delay. It is now well-settled that there are no specific provisions in the C.P.C. for dismissal and for the restoration of a civil revision, therefore, the same can be dismissed and restored by the court while exercising its inherent powers. As there is no specific article of the Act which would prescribe

the limitation period for the exercise of such inherent power of the court, therefore, the residuary Article 181 of the Act, which prescribed limitation period of three years, shall be attracted. Reference in this regards may be made to the case of Mandi Hasan alias Mehdi Hussain and another v. Muhammad Arif (PLD 2015 SC 137) and Ghulam Qadir and others v. Sh. Abdul Wadood and others (PLD 2016 SC 712). Hence, holding the restoration application well within time, this application being misconceived is dismissed accordingly.

2. Through this application, the applicants seeks recalling of the order, dated 05.08.2013, whereby this civil revision was dismissed by this Court for non-prosecution.

Learned counsel for the applicants contends that the applicants were not informed by their previous counsel about the date of hearing; therefore, they could not make their appearance before this Court in the matter and they also do not know the reasons for that their counsel remained absent from the Court. He further contends that the absence of the applicant on said date of hearing was neither intentional nor deliberate but it was beyond their control.

On the other hand, learned counsel for the respondent opposes this application by maintaining that the applicants have failed to show sufficient cause for restoration of instant civil revision.

I have given due consideration to the contentions of learned counsel for the parties and perused the material available on record.

It appears that before 05.08.2013, when the instant civil revision was dismissed for non-prosecution, on various previous dates of hearing including 12.03.2012, 30.04.2012, 24.08.2012, 09.10.2012 and 05.11.2012 the counsel for the applicants and the applicants failed

to make their appearance before this Court in the instant case. Negligence of the counsel is no ground for restoration of the revision application. It is now well-settled that negligence of the counsel is negligence of the party. Absence of the party and their counsel on consecutive six dates of hearing shows that the same was deliberate and will full. Hence, the cause shown by the applicants for restoration of instant civil revision being unsound and unwarranted is declined. Consequently, this application is dismissed, accordingly, with no order as to costs.

3. In view of order passed on C.M.A. listed at No. 2, this application has become infructuous; hence, the same stands dismissed.

Ahmed

JUDGE