

Order Sheet
IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR

Civil Revision Application No.S- 08 of 1999

Date of hearing	Order with signature of Judge.
-----------------	--------------------------------

Application in d/o case

For hearing of CMA 663/2010 (**Restoration**)

16-09-2022

Mr. Raj Kumar D. Rajput, Advocate for the Applicants.

Mr. Abdul Qadir Shaikh, Advocate for the private respondents.

Instant Civil Revision Application was dismissed by this Court for non-prosecution vide order dated 30.08.2010; thereafter, the applicants filed listed application on 06.10.2010 for setting aside dismissal order and restoration of Civil Revision Application to its original position.

Learned counsel for the applicants contents that on 30.08.2010, the then counsel for the applicants Mr. Shakeel Akhtar Memon was not feeling well, hence he requested to Mr. Noor Hassan Malik, Advocate on telephone to hold brief on his behalf; as such, Mr. Maik informed that cases were proceeded up to 10:00 a.m and then the Presiding Judge left the Court by directing to Reader to give dates by consent of learned counsel. However, on the very next date i.e. 31.08.2010, counsel for the respondents informed to the then applicants' counsel that Civil Revision Application was called yesterday at 1:15 p.m and since the applicants as well as their counsel were not in attendance, the same was dismissed for non-prosecution. Learned counsel further contends that absence of the applicants was neither deliberate nor intentional

but due to heavy flood in their village located far away, hence they could not contact with their counsel, who himself failed to make his appearance due to illness. He also contends that the valuable rights of the applicants are involved in the matter, hence same should be decided on merits.

On the other hand, learned counsel appearing on behalf of the private respondents maintains that it was not first time, on 30.08.2010, when the applicants and their counsel remained absent before this Court, as the record shows that on various dates of hearing, applicants' counsel failed to appear and argue the matter; as such, the Court was left at no option but to dismiss the Civil Revision Application for non-prosecution. Hence, restoration merits dismissal.

Heard learned counsel for the parties and perused the material available on record.

It appears that earlier to 30.08.2010, the applicants and their counsel were called absent on 26.03.2009, however, as an indulgence, the matter was adjourned to 02.02.2010, on which date again none was present on behalf of the applicants and in the interest of justice, matter was adjourned to 30.08.2010, when the matter was dismissed for non-prosecution. So far convention of learned counsel for the applicants for non-appearance of the then counsel for the applicants on the alleged date i.e. 30.08.2010 is concerned, it appears that neither affidavit of Mr. Noor Hassan Malik, Advocate nor of Mr. Shakeel Ahmed Memon, Advocate has been filed in support of such contentions; so also, nothing has been brought on record to establish the fact that on the alleged

date, matters were proceeded up to 10:00 a.m The said assertion also appears to be contrary to the fact that it is specifically mentioned in the case diary of 30.08.2010 that the matter was taken at 1:10 p.m, when counsel for the respondents Mr. G.M. Abbasi was in attendance, however, none was in present on behalf of the applicants and no intimation was received, hence instant Civil Revision Application was dismissed for non-prosecution.

Since no sufficient cause for non-appearance of the applicants and their counsel on 30.08.2010 has been shown, the listed application being devoid of any merit is **dismissed** accordingly with no order as to costs.

JUDGE

Ahmad