

JUDGMENT SHEET

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Civil Revision Application No. 220 of 2022

Date of hearing **07.04.2023.**

Date of Judgment: **07.04.2023**

Applicant: Through Mr. Riazuddin Qureshi Advocate for applicant.

Respondents: None present for the respondent.

J U D G M E N T

MUHAMMAD JUNAID GHAFAR, J. - Through this revision application the applicant has impugned order dated 06.07.2022 passed by the III-Additional District Judge Hyderabad in Civil Appeal No.311 of 2017, whereby the appeal stands dismissed due to failure of the applicant to comply with its order dated 28.05.2022.

2. Heard learned counsel for the applicant and perused the record. It appears that the applicant preferred civil appeal against Judgment dated 08.11.2017 passed in First Class Suit No.562 of 2014, by the Senior Civil Judge Hyderabad, whereby the applicant's suit for declaration and cancellation was dismissed. Such appeal of the applicant was dismissed for non-prosecution and thereafter, the applicant sought its restoration. On restoration application the following order was passed on 28.05.2022.

"The instant civil appeal was instituted on 05.12.2017, firstly, it was dismissed for non-prosecution on 03.09.2021 and then vide Order dated 13.01.2022 on the application of the appellant, the same was restored. Again, the appellant failed to proceed the same, therefore, the same was dismissed on 13.04.2022. Present application is filed for recalling of the Order dated 13.04.2022 and for restoration of the appeal. The application is accompanied by an affidavit of the attorney for the Appellant.

2. *The notices issued to the respondent's side. Service through the bailiff on 26.05.2022 so also service through courier, taking report of which submitted along with the statement. Since, the respondent did not appear, therefore, service held good.*

3. *Heard. Record perused. Learned Counsel for the appellant prayed for restoration of the appeal so it may be decided on merits. It is settled position of law that Procedural laws are framed for advancement of justice and to take cause to a logical end for and against the litigating parties. Technicalities cannot be allowed to operate as tyrant masters so as to smother and frustrate genuine claims.*

4. *Keeping in view the settled position of law, the order dated 13.04.2022 is recalled and the appeal is restored to its original position subject to payment of cost of Rs.10,000/- to be deposited in the account of District Court before next date of hearing viz. 06.07.2022. In case of nonpayment of cost, the order shall automatically stand vacated."*

3. From perusal of the above order, it appears that the appeal of the applicant was dismissed firstly, for non-prosecution on 03.09.2021 and was then restored as an indulgence on 13.01.2022. Thereafter, once again the applicant failed to pursue the appeal and it was again dismissed on 13.04.2022. Once again the applicant sought restoration and on such restoration application, the appeal was once again restored, however, this time cost of Rs.10,000/- was imposed which the applicant failed to deposit and once again the appeal was dismissed on 06.07.2022. On perusal of the record and the above order, it appears that the applicant has not been vigilant to pursue her appeal and time and again it has been dismissed and then restored, whereas, such conduct of the applicant does not entitle her for exercise of any discretion anymore.

4. In view of such position and owing to the conduct of the applicant as above, the civil revision application does not merit any consideration and is hereby dismissed *in limine* with pending application.

JUDGE

A.