

Order Sheet

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Civil Revision App. No. S - 131 of 2015**

Date of hearing	Order with signature of Judge
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**Hearing of case**

1. For orders on CMA No.649/2015 (Ex.)
2. For hearing of main case

**17.04.2023**

Mr. Sarfraz A. Akhund, Advocate for the applicant.  
Mr. Muhammad Qayyum Arain, Advocate for respondent No.1.  
Mr. Mehboob Ali Wassan, Assistant Advocate General Sindh.

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**ZAFAR AHMED RAJPUT, J. -** Vide order dated 14.10.2022, an application under Order XXII Rule 4, C.P.C. filed by the applicant was allowed with direction to file amended title to bring on record the legal heirs of respondent No.1. The said order has not been complied with despite passing of about six (06) months. Learned Counsel for respondent No.1 states that he is ready to respond the arguments of learned Counsel for the applicant on merit, which is not likely to prejudice the rights of legal heirs of respondent No.1.

2. This Civil Revision Application is directed against the order dated 17.08.2015, whereby the Additional District Judge-IV, Khairpur, while dismissing Civil Misc. Appeal No. Nil of 2015, maintained the order dated 28.03.2015, thereby the learned Senior Civil Judge, Mirwah dismissed an application filed by the applicant/ plaintiff No.6 under Order IX Rule 9, C.P.C. for restoration of Civil Suit Old No. 89 of 2001 (*New No. 87 of 2009*), which was dismissed by the said trial Court on 17.06.2010.

3. Learned Counsel for the applicant contends that the impugned orders have been passed by the Courts below without considering the

legal merit of the of the restoration application; that the applicant has got valuable rights in the suit property and he intends to proceed with the matter for getting judgment and decree on merit; that in case instant Civil Revision Application is not allowed, the applicant shall suffer irreparable loss; that the alleged delay in filing application under Order IX Rule 9, C.P.C. was neither deliberate nor willful but due to the circumstances that the Attorney of the applicant was confined to bed due to sickness, which fact ought to have been considered by the learned Courts below while deciding said application.

4. On the other hand, learned Counsel for respondent No.1 as well as learned A.A.G., while supporting impugned orders of the Courts below, maintains that the applicant failed to show sufficient cause for the alleged delay in filing application under Order IX Rule 9, C.P.C. for restoration of his Civil Suit; hence, learned trial Court rightly dismissed the said application and learned appellate Court maintained the order of learned trial Court by impugned order, which is being well-reasoned, is liable to be maintained.

5. Heard, record perused.

6. It appears that the applicant along with 09 others maintained aforementioned Suit for declaration, mandatory and permanent injunction against the respondents through their Attorney/plaintiff No.1, namely, Haji Muhammad Sohrab, which was consolidated with Civil Suit No.13 of 2001 filed by respondent No.1 herein against Haji Parial, the father of the plaintiffs No.1 to 3 of Civil Suit No.89 of 2001, in respect of same suit property. Both the Civil Suits were consolidated by the trial Court vide

order dated 19.12.2002. Subsequently, Civil Suit No.89 of 2001 was decreed and Civil Suit No.13 of 2001 was dismissed by the trial Court vide consolidated judgment dated 28.04.2003. Against that, plaintiff of Civil Suit No.13 of 2001/respondent No.1 herein filed common Appeal No.88 of 2003, which was allowed by the 1<sup>st</sup> Additional District Judge, Khairpur vide order dated 28.08.2008, whereby both the Civil Suits were remanded to trial Court to decide afresh. After remand of the Civil Suits, Applicant and other plaintiffs along with their Advocate made their appearance in subject Civil Suit No.89 of 2001 before the trial Court, pursuant to Court motion notices, on 08.03.2010 and 15.10.2010; while on 22.03.2010, 05.04.2010 and 19.04.2010, they made their appearance before the trial Court but their counsel was called absent. On 30.05.2010, said plaintiffs and their Counsel were called absent, however, the learned trial Court adjourned the matter in the interest of justice to 17.06.2010, on which date the said plaintiffs and their Counsel failed to make appearance without intimation; hence, subject Suit of the applicant and other plaintiffs was dismissed by the learned trial Court for non-prosecution.

7. It reflects from the aforementioned record of appearance of the applicant and other plaintiffs before the trial Court that they were well aware of fixing of their civil suit after issuance of Court motion notices. It further reflects from the perusal of the record that on 15.09.2011, plaintiffs of the subject Suit filed an application under Order IX Rule 9, C.P.C. along with an application under Section 5 of the Limitation Act, which was dismissed by the trial Court vide order dated 25.11.2011. Thereafter, on 26.03.2015, present applicant, who was plaintiff No.6 of the subject Suit, again filed second application under Order IX Rule 9, C.P.C. along with an

application under Section 5 of the Limitation Act with delay of more than five (05) years though the application of like nature was already dismissed; hence, it does not appeal to a prudent mind that present applicant was unaware of dismissing the subject Suit for non-prosecution. Therefore, the ground taken by the applicant for restoration of his Suit appears to be bereft of reason.

8. For the forgoing facts and reasons, the impugned orders passed by the Courts below appear to be well-reasoned, which require no interference of this Court under its revisional jurisdiction. Accordingly, Civil Revision Application is **dismissed** along with pending application, with no order as to costs.

Abdul Basit

J U D G E