

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No.54 of 2020

M/s Data Steel Pipe Industries (Pvt.) Ltd.
Versus
M/s Sui Northern Gas Pipelines Ltd., and others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
------	-----------------------------------

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Jawad Akbar Sarwana

Hearing case (priority)

1. For orders on office objection/reply at "A".
2. For hearing of main case.
3. For hearing of CMA No.460/2020 (stay).

.....

Dated 06.11.2023

Mr. Hanif Faisal Alam, Advocate for the Appellant.

None present for the Respondents.

.....

Notices of this appeal were served upon the respondents but no one is in attendance on their behalf.

This appeal is pending in relation to an order passed on 15.01.2020 in terms whereof a restoration application was dismissed.

Brief facts of this case are that only an injunction application bearing CMA No.15313/2016 was fixed for hearing on 17.12.2019 when the suit was dismissed for non-prosecution. It is appellant's case that the suit itself was not fixed for hearing on the date when it was dismissed; at the most since the matter was fixed for hearing of injunction application, that application could have been dismissed. It is urged that in the matter neither issues were framed nor the matter was fixed for framing of issues, which could said to be a date of hearing, as far as the suit is concerned. Consequently, the restoration application in this regard was also dismissed on the count that on the crucial date when the suit was dismissed for non-prosecution, even any other representative of the company was not in attendance.

We have heard learned counsel for the appellant and perused the material available on record.

Impugned order on restoration application does not cover the legal point that on the crucial date when the suit was dismissed, it was not fixed for hearing, rather application for injunction was fixed and at the most that application could have been dismissed. Counsel for appellant has relied upon a judgment reported in 1993 SCMR 1949 [*Qazi Muhammad Tariq v. Hasin Jahan and 3 others*].

It seems that at the most on the crucial date when the appellant, being plaintiff in the suit and his counsel were not in attendance, the injunction application could have been dismissed, as the suit was never fixed for hearing. Hence, in consideration of the above arguments and in view of the judgment referred above, the appeal is allowed. Two orders dated 17.12.2019 and 15.01.2020 are set aside and Suit is restored to its original stage as it was on 17.12.2019 prior to order.

JUDGE

JUDGE

Ayaz Gul