

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No.351 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on CMA 3430/2023
2. For orders on CMA 3431/2023
3. For hearing of main case

11.12.2023

Mr. Ahsan Ali Bhurgari advocate for applicants.

1. Granted.

2&3. Present revision assails order dated 26.08.2023 whereby application under Order 41 Rule 19 CPC filed by the applicants to recall an order, for restoration of an appeal, was dismissed. The pertinent observations are reproduced herein below:

“6. I have carefully considered the arguments advanced by learned counsel for the appellants and perused the entire material available on record. Perusal of record shows that on 02-12-2020 the instant appeal was fixed for regular hearing, but the case diaries shows that the learned counsel for appellants was called absent on many dates of hearings viz. 05-01-2021, 01-04-2021, 15-04-2021, 24-05-2021, 12-07-2021, 27-11-2021, 18-12-2021, 22-01-2022, 26-02-2022, 19-03-2022, 16-04-2022 and on 30-04-2022 i.e. the date of dismissal of the above appeal for non-prosecution, while the appellant No. 1 was present 14.12.2020, 05.01.2021 and 28.10.2021 and they were called absent on the remaining dates of hearings. The above conduct of appellants and their counsel shows that they failed to advance the arguments in the instant appeal without any cogent reason though sufficient time was provided to them for the said purpose which amounts to abuse of process of Court.

7. Hence for the foregoing reasons I am of the humble view that the learned counsel for the appellants has failed to show cogent ground for restoration of appeal, hence the instant application merits no consideration. Consequently the same is hereby dismissed with no order as to cost. Order accordingly.”

Present revision assails the aforementioned order, however, the narrative / observations contained in the impugned order are not controverted. Counsel also remained unable to demonstrate as to why the impugned finding could not be rested upon the rationale delineated.

Learned counsel submits that the diary sheets of the relevant court have been attached. Perusal of the same demonstrates the absence of the applicants not only on the said mentioned dates but on numerous other dates. Counsel was confronted in such regard, however, he failed to articulate any cogent response.

A party is required to remain vigilant with respect to legal proceedings; more so when the same have been preferred by the party itself. The truancy of the applicant from the proceedings under scrutiny is *prima facie* apparent and the same has also been admitted presently. Under such circumstances it was the prerogative of the Court to determine the proceedings and that is what appears to have been done. Counsel remained unable to justify the persistent absence and no case has been made out to condone the default. The Supreme Court has observed in *Nadeem H Shaikh*¹ that the law assists the vigilant, even in causes most valid and justiciable. The fixation of cases before benches / courts entails public expense and time, that must not be incurred more than once in the absence of a reason most genuine and compelling. Default is

¹ Per Qazi Muhammad Amin Ahmed J. in *SECP vs. Nadeem H Shaikh & Others (Criminal Appeal 518 of 2020)*; Order dated 27.10.2020.

exasperating and such long drawn ineptitude cannot be allowed to further encumber pendency of the Courts.

The appellate court appears to have exercised its jurisdiction and no infirmity in such regard is manifest. It is trite law² that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the order impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forum.

Notwithstanding the foregoing, learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the impugned order is either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity.

In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed *in limine* along with listed applications.

Judge

Ali Haider

² Per *Faqir Muhammad Khokhar J. in Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.