

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No. 644 of 2010

Date: Order with signature of the Judge

For hearing of CMA No.12855/2023

20.09.2023

Khawaja Shamsul Islam, advocate for the plaintiffs
Mr. Kaleem Ali, advocate for defendant No.6
Mr. Shahryar Qazi, Assistant Advocate General

The present suit was dismissed for non-prosecution vide order dated 27.03.2023, in the following terms:

“Despite repeated calls, no one is in attendance on behalf of the Plaintiffs; same was the position on the last many dates of hearing. Perusal of record shows that in compliance of the Order dated 11.05.2022, learned Nazir conducted the inspection of suit property and submitted his Report dated 03.06.2022 (presented on 10.09.2022), which also reveals that Plaintiffs also failed to participate in the inspection proceeding. The conduct of the Plaintiffs shows that they have lost their interest to proceed further in the matter. Accordingly, this suit is dismissed for non-prosecution along with all pending applications”

A new counsel was engaged on 21.08.2023 and on the said date an application for restoration was preferred; being demonstrably time barred.

Learned counsel for the applicant / plaintiff submitted that application be allowed and suit restored on the grounds that no limitation was provided for filing of restoration application under the Limitation Act, 1908 and even if the residual article is invoked the said limitation would be three years; a suit at the arguments stage cannot be dismissed for non-prosecution; and finally that mere applications were fixed on the said date and not the suit itself. Learned AAG has no objection if this application is allowed, subject to cost.

On the contrary learned counsel for defendant No.6 submitted that no case has been made out for grant of the application under consideration. He submitted that the suit was filed in the year 2010 and the *ad interim* order obtained was perpetuated *ad infinitum*. It was added that post 2017 the plaintiff was barely ever represented in Court and the order dated 27.03.2023 was rendered in due appreciation of the facts and circumstances and merited no interference.

Heard and perused.

In so far as the issue of limitation is concerned, the applicant's counsel has perhaps overlooked Article 163 of the Limitation Act, 1908, which provides the period of limitation to set aside a dismissal for default. In view of the said law the present application is hopelessly time barred. Furthermore, even though section 5 of Limitation Act, 1908, has been held applicable in matters per Order 9 CPC, no application in such regard has been preferred. Therefore, no case has been set forth to consider an application *prima facie* barred by limitation¹.

Notwithstanding the foregoing, it is well settled law that a matter listed for arguments could be dismissed for non-prosecution; as is apparent from preponderant authority of the superior courts². The honorable Supreme Court has recognized that such dismissal would even be attracted in revision matters³.

On 27.03.2023 it was the present suit that was fixed for hearing⁴ and the order passed aptly encapsulated the reasons relied upon. The applicant's plaintiff's counsel has been unable to demonstrate that the said order could not have been rendered on the rationale cited⁵. In view hereof this application is found to be misconceived and even otherwise devoid of merit, hence, is hereby dismissed.

JUDGE

Amjad/PA

¹ Per *M Javed Buttar J* in *Mian Muhammad Asif vs. Fahad & Another* reported as 2009 SCMR 1030.

² Per *Muhammad Ali Mazhar J.* in *Al Waqar Corporation vs. Rice Export Corporation* reported as 2011 MLD 266; *Yawar Hussain vs. Ansar Ali Khan* reported as 2010 CLC 46; *Sher Muhammad vs. Ahmad Khan* reported as 2004 CLC 1016; *Abid Mahmood vs. Abdul Aziz* reported as 2003 YLR 3196; *Qaim Ali Khan vs. Muhammad Siddique* reported as 1987 SCMR 733; *Manager Jammu & Kashmir State Property in Pakistan vs. Khuda Yar* reported as PLD 1975 Supreme Court 678.

³ Per *Saqib Nisar J* in *Ghulam Qadir vs. Sh Abdul Wadood* reported as PLD 2016 Supreme Court 712.

⁴ Per *Mian Saqib Nisar J.* in *Rana Tanveer Khan vs. Naseerudin* reported as 2015 SCMR 1401.

⁵ *Ghulam Qadir vs. Haji Muhammad Suleman* reported as PLD 2003 Supreme Court 180; *Muhammad Naeem vs. KA Bashir* reported as 2010 CLC 1039; *Ciba Geigy (Pakistan) Limited vs. Muhammad Safdar* reported as 1995 CLC 461; *Haji Muhammad Sharif vs. Settlement & Rehabilitation Commissioner* reported as 1975 SCMR 86; *Zulfiqar Ali vs. Lal Din* reported as 1974 SCMR 162.