

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**Present:**

Nadeem Akhtar, J  
Yousuf Ali Sayeed, J

**1<sup>st</sup> Appeal No.52 of 2023**

Chakar Khan .....Appellant

Versus

Mst. Saira Abdul Rauf and another.....Respondents

Muhammad Daud Narejo, Advocate for the Appellant.  
Aftab Ahmed Satti, Advocate for the Respondent No.1.

Date of hearing : 03.10.2023

**ORDER**

**YOUSUF ALI SAYEED, J.** - The Appellant has impugned the Order dated 18.05.2023 made by the learned VIIIth Additional District Judge Karachi (South) in Summary Suit No.25 of 2023, dismissing an Application made by him under Order 9 rule 9 CPC read with Section 151 CPC for the restoration of his Application seeking Leave to Defend, as well as the Judgment and Decree that then ensued on the same date.

2. The backdrop to the matter is that the Application seeking leave to defend in the Suit came to be dismissed for non-prosecution on 27.08.2022, in the following terms:

“Case called thrice. Learned counsel for the Plaintiff is present. None is present from Defendants side. It is now 02.45 p.m From perusal of the record, it reveals that since six dates of hearing the instant Summary Suit is fixed for hearing of Application for leave to defend but the Defendants’ side has failed to argue the same. Today neither any intimation/application for adjournment received nor anybody from Defendant’s side appeared before this Court in the present Summary Suit, which reflects that the Defendant has lost his interest in present Summary Suit, therefore, the Application for leave to defend filed by the learned counsel for Defendant is hereby dismissed for non-prosecution, simultaneously the instant Summary Suit is hereby proceeded ex-parte against the Defendant.”

3. The Appellant then filed the aforementioned Application under Order 9 Rule 9 CPC as late as 07.02.2023, which was dismissed by the trial Court while observing that:

“On perusal of record, it appears that application for leave to defend was dismissed for non-prosecution was dismissed for non-prosecution on 27-08-2022, whereas the defendant has filed present application on 07-02-2023. Under the law, the defendant was supposed to file application for recalling of said order within 30 days i.e. on or before 26-09-2022 but instead of filing the application within time frame, the defendant through his counsel filed instant application on 07-02-2023 after about five and half months. As regards to the contention of counsel for the defendant that previous counsel of the defendant failed to pursue the application for leave to defend is concerned, I am of the view that said contention would of no help for the defendant as defendant was also under obligation to pursue his case.”

4. Proceeding with his submissions, learned counsel for the Appellant merely sought to absolve the Appellant from responsibility in the matter by placing the blame entirely upon the shoulders of counsel who had been appearing on his behalf. However, on query posed as to how the Appellant could be so disassociated from the matter as to shield him from the omissions of counsel, no cogent response was forthcoming. Nor was any case advanced to demonstrate that the Appellant had otherwise shown any initiative or taken reasonable measures to oversee that his defense was properly conducted. Indeed, a perusal of the very Application filed by the Appellant under Order 9 Rule 9 CPC reflects it to be so vague as to offer nothing by way of a proper explanation or justify the delay. On the contrary, the stance adopted by the Appellant confirms the indolence that marked the proceedings, in as much as it was stated that:

“It is submitted that after filing an application for leave to defend the suit by the defendant, the matter was fixed by this Hon’ble Court for arguments on said application but the previous counsel for the defendant failed to argue the same though it was his professional duty to argue the same as he was engaged by the defendant. The previous counsel for the defendant had informed the defendant that when this Hon’ble Court shall pass the order on the application for leave to defend the suit then he will inform the defendant about its fate and will call him for filing written statement, but sufficient time was passed but the previous counsel did not inform the defendant about the progress of the case and therefore the defendant contacted with another counsel and requested him to inform him about the progress of the case who on 16.01.2023 informed the defendant that his application for leave to defend has been dismissed for non-prosecution on 27.08.2022.”

5. Thus, when confronted with the content and tenor of the aforementioned Application, learned counsel for the Appellant was at a loss to point out any error or illegality in the impugned Order, and merely fell back on the cavalier plea that the Appellant was now ready to diligently defend the matter.
  
6. Under the given circumstances, we are of the view that the approach of the trial Court cannot be faulted and the Order/Judgment under challenge does not warrant interference. That being so, we had accordingly dismissed the Appeal vide a short order dictated in Court upon culmination of the hearing on 03.10.2023.

JUDGE

JUDGE

Karachi  
Dated