

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

**Present:**

Nadeem Akhtar, J  
Yousuf Ali Sayeed, J

**1<sup>st</sup> Appeal No.78 of 2023**

Syed Muhammad Naeem.....Appellant

Versus

Ziauddin and another.....Respondents

Aftab Hussain, Advocate for the Appellant.

Date of hearing : 13.10.2023

**ORDER**

**YOUSUF ALI SAYEED, J.** - Through this First Appeal filed under section 96 of Code of Civil Procedure, the Appellant seeks to impugn the Order dated 16.09.2023 made by the learned VIIIth Additional District Judge, Karachi, East, in Summary Suit No.121/2022, dismissing an Application filed by the Appellant seeking that the *ex-parte* Judgment and Decree dated 04.03.2023 passed in that matter be set aside.

2. A perusal of that Application reflects that the only ground raised by the Appellant was that he had engaged a counsel to represent him in the Suit, who had filed his vakalatnama on 07.12.2022 but thereafter absented himself without informing the Appellant, hence the matter had proceeded in his absence so as to culminate in terms of the *ex-parte* judgment. It was submitted that the Appellant only became aware of the development on 09.03.2023, through the criminal proceedings arising out of the dishonor of the same cheques.

3. That plea did not find favour with the learned ADJ, who was pleased to dismiss the application vide the impugned Order. The relevant except reflecting the reasons that prevailed reads as under:

“It is thus observed that Defendant has not denied of engaging the counsel named above on his behalf who filed Vakalatnama on his behalf. Thereafter whatever proceeding was effected was deemed to be in knowledge of the Applicant/Defendant.

In this respect, it is settled that law helps the vigilant and not indolent. Any negligence on the part of the Advocate is binding upon the Defendant who had engaged such Advocate; as such if the Defendant has engaged an Advocate who lack sense of responsibility to the Court, it is the party who should suffer and not the other side; I relied upon case of Zahid Ahmed V/s Deputy Director Adjudication vide 2006 PLD 252 [Karachi (High Court of Sindh)]. Any such negligence does not constitute sufficient cause for recalling of the Judgment in question and only remedy is available to the Defendant/Applicant against negligence of his counsel for not appearing and proceedings with the case can be to file suit for damages against the counsel for to approach the appropriate forum; I seek guidance from case of Mubarak Masih V/s Muhammad Yaqoob, vide 2019 CLC 321 Karachi (High Court of Sindh)]. Besides, it always was the duty of the litigant/party/Defendant in the present case to keep abreast of the proceedings and progress of the matter and it was also his duty to remain in touch with the counsel; as such, if his counsel for any reason was not providing the progress report of his case then it was his responsibility to personally keep track of the same as it would head to suffer in case of any adverse order against him; I rely upon case of Muhammad Akbar and 2 others V/s Pakistan through Military Estate Officer and two others vide PLD 2014 Sindh 114.

For what has been observed above, I do not find any merit in the instant application which is thus dismissed and disposed of accordingly.

4. On query posed to learned counsel as to what error or infirmity afflicted the impugned Order, no cogent response was forthcoming.
  
5. Indeed, it is a well-established principle of law, which has been consistently held and followed by the Superior Courts, that parties are bound by the acts and omissions of their counsel, and in case of any negligence on the part of the counsel, the parties cannot claim that they are not to be held responsible, nor does any negligence on the part of the counsel absolve the parties from prosecuting or defending the matter. In this context, reference may be made to the case of Zulfiqar Ali V/S Lal Din and another, **1974 SCMR 162**, wherein the Hon'ble Supreme Court was pleased to hold *inter alia* that mere fact that a litigant engaged a counsel on his behalf did not absolve him of all responsibilities ; it was as much his duty as that of the counsel engaged by him to see that the case was properly and diligently prosecuted ; and, if he engaged a counsel who was lacking in his sense of responsibility to the Court, it was he who should suffer and not the other side. The cited case of ZulfiqarAli supra was followed by a learned Division Bench of this Court in the case of Zahid Ahmed V/S Deputy Director Adjudication and 2 others, **PLD 2006 Karachi 252**. As such, the explanation/justification sought to be advanced by the Appellant cannot be accepted. The Appeal is thus found to be misconceived.

6. That being so, while granting urgent application, we accordingly dismiss the Appeal in *limine* along with the pending applications, with no order as to costs.

JUDGE

JUDGE

Karachi  
Dated