

*Order Sheet*

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**Civil Revision Application No.91 of 2022**

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DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For orders on CMA-1087/22 (exemption)

For orders on CMA-1088/22 (stay)

For hearing of main case

**16.10.2023**

Mr. Ghulam Murtaza Shaikh advocate for applicants.

Mr. Rafique Ahmed Dahri A.A.G. along with ASI Muhammad Qasim Abro  
PS Nooriabad.

**ORDER.**

**Agha Faisal J.** Briefly stated, F.C. Suit No.09 of 2019 was filed before the learned Senior Civil Judge-II, Kotri. The judgment rendered therein dated 07.08.2021 demonstrates that the issues were framed on 28.10.2019; whereafter, despite repeated directions the applicants failed to proceed with the evidence. On 02.12.2019 the Suit was dismissed for non-prosecution, however, the restoration application was allowed. The judgment demonstrates that applicants failed to lead evidence and the side was closed, vide order dated 18.03.2021. The side was opened with strict directions, vide order dated 29.05.2021, however, the applicants still failed to lead evidence. On 17.07.2021 failure to lead evidence was once again condoned with a note of caution. However, the situation remained the same and the learned trial Court was pleased to dismiss the Suit under Order XVII Rule 3 CPC vide judgment dated 07.08.2021. The appeal there against, being Civil Appeal No.55 of 2021, was dismissed by the Court of learned Additional District Judge-II, Jamshoro @ Kotri vide judgment dated 08.01.2022, hence, this revision.

Applicants' learned counsel contends that since valuable property are involved in the dispute, therefore, the applicants ought not to have been non suited. Learned counsel submits that the reason that evidence could not be led was because the attorney of the applicants was unable to attend the Court. It is also contended that the attorney was perhaps in collusion with the other side. Learned A.A.G supports the impugned orders and submits that 37 dates / opportunities were provided to the applicants to lead evidence, however, they failed to do so, therefore, the judgments impugned have been rightly rendered.

Heard and perused. The law provides the opportunity to a party to lead its case, however, such a right does not perpetuate indefinitely; to the manifest detriment of the other party. 37 dates / opportunities to lead evidence coupled with cautions ought to have been enough for the applicants, however, it is manifest that the applicants in fact did not lead evidence. The accusations against

an attorney do not justify the conduct of the applicants; more so since the record is devoid of any remedial measures having been initiated against the said person.

The judgments have clearly appreciated the facts and concluded as aforesaid. The original judgment as well as judgment in appeal appear to have considered the record and the law and no infirmity in respect thereof has been identified to this Court. It is settled law that in the presence of concurrent findings, coupled with preponderance of claim supported by evidence, a revisional court ought not to interfere even if another view was possible. Reappraisal of evidence was even otherwise undesirable in revisional proceedings<sup>1</sup>. It is imperative to denote that the present proceedings are revisionary and not yet another stage of appeal.

This Court has considered the contentions of the applicants and has noted the inability 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 judgments are either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity. It is trite law<sup>2</sup> 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 judgments impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate fora.

It is the considered view of this court that the applicant has remained unable to demonstrate any infirmity with the impugned judgments, meriting interference in revision under Section 115 C.P.C, therefore, this revision is hereby dismissed.

JUDGE

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<sup>1</sup>2011 SCMR 758; 2007 SCMR 236; 2006 SCMR 5; 2006 SCMR 1304.

<sup>2</sup>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*.