

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.924 of 2005

Date	Order with signature of Judge(s)
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1. For hearing of CMA No.5908/2022.
2. For hearing of CMA No.12139/2020.

08.08.2024

Mr. Khalid Nawaz Marwat, advocate for the plaintiffs.
Mr. Farhatullah, advocate for the defendant No.1.

2. This is an application for restoration of suit which was dismissed vide order dated 06.10.2020. The order is reproduced herein below:

“...This suit was instituted on 22.07.2005. The pleadings are on record and the matter is being listed repeatedly *inter alia* for arguments¹, however, the plaintiff remains absent without intimation and / or justification.

2. The consistent absence of the plaintiff on numerous dates of hearing is borne from the record, inclusive of the orders dated 01.06.2006, 23.10.2013, 09.02.2015, 12.01.2017, 16.02.2017, 08.03.2017, 18.04.2017, 05.05.2017, 15.08.2017, 30.08.2017, 21.09.2017, 26.10.2018, 27.11.2018, 23.04.2019, 27.08.2020 and 03.09.2020. On the last date of hearing learned counsel for the plaintiff sought time to obtain instructions but failed to appear and proceed with the matter today. It appears that the plaintiff has lost interest in pursuing the proceedings

3. In view hereof, this Court is constrained to hereby dismiss this suit, along with pending application/s (if any), for non-prosecution².

Per learned counsel, parties / legal heirs live abroad, hence could not appear on the relevant date. It is stated that on the very day the suit was dismissed, the dealing counsel was busy before another court. Counsel submits that he has been engaged after dismissal of suit, hence, this application.

Counsel for the defendant No.1 submits that the application is in itself discrepant and it is filed under affidavit of counsel and no plaintiff came forward to prefer the same.

¹ 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.

² Order IX Rules 3 & 8 read with Order XVII Rule 2 of the Code of Civil Procedure 1908; *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.

The record cited supra *prima facie* demonstrates the disinterest of the plaintiff in the present proceedings. No reasonable justification for the absence of the respective learned counsel has been articulated.

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 plaintiff from the proceedings under scrutiny is *prima facie* apparent and the same has also been admitted by the newly engaged counsel. 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*³ 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, which must not be incurred more than once in the absence of a reason most genuine and compelling. Default is exasperating and such long drawn ineptitude cannot be allowed to further encumber pendency of the Courts.

In view hereof, listed application is dismissed. As a consequence hereof, application listed at serial no.1 is dismissed.

Judge

Khuhro/PA

³ Per Qazi Muhammad Amin Ahmed J. in *SECP vs. Nadeem H Shaikh & Others (Criminal Appeal 518 of 2020)*; Order dated 27.10.2020.