

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Civil Misc. Appeal No. S – 13 of 2023

Date of hearing	Order with signature of Judge
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Hearing of case

1. For orders on office objection at flag 'A'
2. For hearing of main case

09-09-2024

Mr. Mir Nawaz Kalhoro, Advocate for the Appellant
Mr. Shahryar Awan, Assistant Advocate General Sindh

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None present for the respondents, who have filed objections to the instant Appeal, which have been perused in their absence. Objections filed merely reiterate the reasons narrated in the impugned order where Appellants' Application under Order XLI Rule 19 CPC was dismissed.

Learned counsel for the appellant states that the appellant filed Civil Appeal No.110 of 2023 before the Court of District Judge, Naushahro Feroze and somehow same was transferred to the Court Additional District Judge, Moro vide order of the District Judge, Naushahro Feroze dated 22.06.2023 of which order appellant had no knowledge, where-after, the matter came up on four different dates before the Additional District Judge, Moro and literally appellant was unaware of transfer of the present case before the concerned Court which eventually was dismissed by Additional District Judge, Moro vide order dated 18.08.2023 stating that none has ever appeared, hence dismissed for non-prosecution. Where against an application was made under Order XLI Rule 19 CPC which application was also dismissed. Counsel submits that appellant has sufficient cause as notice of transfer of the case has never been served upon him. Not only so, even the notice of dismissal of the Suit in

non-prosecution dated 18.08.2023 was also never came to his knowledge and he has been condemned unheard that some sufficient cause for Appellate Court who should have granted his application under Order XLI Rule 19 CPC. Learned counsel has placed reliance on the judgment of Honourable Supreme Court in the case of Babar Hussain Shah and another vs. Mujeeb Ahmed Khan and another (2012 SCMR 1235) wherein Honourable Supreme Court has held that since no notice issued to the applicants for relisting issued to the applicant, the dismissal was illegal. It well settled principle of law that justice should be done on merits rather on technicalities. He has also relied upon the judgment of this Court in the case of Chaudhary Muhammad Yaseen vs. Abid Waseem reported as (2014 M L D 1078), where all such grounds in delay in filing the Appeal an application under Section 5 of the Limitation Act, 1908 was also condoned.

In the circumstances at hand, when objections filed by respondents do not set any new ground, except what was stated in the impugned orders, this Appeal is allowed. The impugned order dated 24.10.2024 is set-aside and the matter is remanded back to the Additional District Judge, Moro to issue notice to all parties concerned to rehear de novo provide an opportunity to all parties and then pass a speaking judgment on merits preferably within sixty (60) days hereof.

Judge