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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Civil Revision Application No. S-44 of 2015

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of CMA No.228/2015.
3. For hearing of main case.

Applicants : Khuda Dino & others.

Respondents : P rovince of Sindh & others.

Nemo for the applicants.

Date of hearing : 17.09.2020.
Date of Order : 17.09.2020.

ORDER

None present on behalf of the applicants nor any intimation is received. Same was the position on the last date of hearing, whereas before that the Court was informed that the Counsel engaged by the applicants is on general adjournment due to his continuous ailment and thereafter direct notice was ordered and on 02.11.2018 the following order was passed:-

“Applicant No.1(vi) Shakeel Ahmed is present and submits that their Counsel Mr. Ghulam Ali Samtio advocate is not feeling well, therefore, he seeks time to engage another advocate. At his request, adjourned to 10.12.2018.”

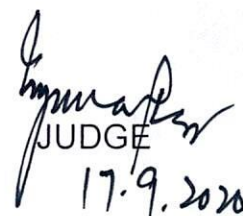
Despite this, neither any other Counsel has been engaged nor the applicants are in attendance. Record further reflects that there are various office objections including the one regarding non-deposit of Court fee and apparently these objections are still yet to be complied with and notwithstanding the non-deposit of Court fee this Court has started the process of issuing notice after notice against the respondents. Be that as it may, even otherwise, I have perused the record and intends to decide this civil revision application on merits instead of dismissing it for non-prosecution.

2. It appears that the applicants have impugned judgment dated 10.03.2015 passed by II-Additional District Judge, Shikarpur in Civil Appeal No.13/2010, which was directed against judgment dated 12.03.2010 passed by 1st Senior Civil Judge, Shikarpur in

F.C. Suit No.60 of 2007, through which the dismissal of the applicants' Suit by the trial Court has been maintained.

3. On perusal of the record placed before me, it appears that a suit for specific performance was filed by the applicants against one Mohammad Rafique (since deceased) through his legal heirs, in respect of some agreement entered into on 18.09.1981. After filing of written statement, the learned trial Court was pleased to settle relevant issues and after going through the evidence led by the parties came to the conclusion that the applicants/plaintiffs have miserably failed to prove the execution of the agreement as contended and the suit was dismissed through judgment dated 12.03.2010. In appeal, once again the applicants failed to convince the Appellate Court, as the evidence led by them was found to be defective and not confidence-inspiring. It is settled law that while exercising civil revision jurisdiction under Section 115 CPC, this Court cannot substitute the findings arrived at by the Courts below on the basis of the evidence on record merely for the reason that a different view could have been possible. In the instant matter such findings are against the applicants from very trial Court to the Appellate Court. These are concurrent findings of fact based on proper appreciation of evidence led by the parties and therefore, while exercising jurisdiction under section 115 CPC and on the facts and circumstances of this case I do not see any reason to interfere with these concurrent findings. Moreover, it is a case of the applicants/plaintiffs against the person, who was no more alive and was sued through his legal heirs in respect of an agreement purportedly entered into by such deceased in the year 1981 and performance of which was sought in the year 2007. In that case the onus of proving the said agreement had increased upon the applicants as against a person who is still alive. This they have miserably failed to prove at the trial.

4. In view of hereinabove facts and circumstances of this case, it appears that the no case for interference is made out so as to disturb the concurrent findings recorded by the two Courts below, and therefore, this civil revision application besides being non-prosecuted continuously, is hereby dismissed on merits as well.


JUDGE
17.9.2020