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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Civil Revision No.S-36 of 2010.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE

1. For Hearing of C.M.A.No.110/2010
2. For Hearing of main case.

09.10.2017. Mr. Abdul Hamid Bhurgari, Addl. A. G for applicant.

Mr. Gulab Rai Jesrani, advocate for respondents.

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Through this civil revision application, the applicant has impugned order dated 19.02.2010, whereby the restoration/re-admission application filed on behalf of applicant has been dismissed.

Learned Addl. A. G submits that in the impugned order the appellate Court has itself observed that the record of the Court was burnt/destroyed on 27.12.2007 and the Court record is not available so as to ascertain that whether the restoration application was within time or not. He further submits that the applicant could not be burdened by the act of the Court whereas law favours decision on merits and not on technicalities. In support of his contention, he has relied upon the case of Imran Ashraf v. The State 2001 SCMR 424.

On the other hand learned counsel for the respondent submits that in the application for restoration and supporting affidavit no satisfactory ground was made out on behalf of the applicant and he has read out the contents of the affidavit and supports the impugned order.

I have heard learned Addl. A. G for applicant and the learned counsel for the respondent and perused the record.

On perusal of the impugned order passed by the appellate Court, it appears that only one ground has prevailed upon the learned appellate Court to dismiss the restoration/re-admission application filed by the applicant and the said ground is that the record was

destroyed/burnt on 27.12.2007 by the protesting mob when the Court building was attacked due to assassination of the former Prime Minister and it is not ascertainable as to whether the restoration application was within time or not. The learned appellate Court has put the burden on the applicant to satisfy as to whether the said application was within time or not as the Court record was not available. After having perused the said order I am of the view that the learned appellate Court has mis directed itself in giving such findings. It is settled law that a litigant shall not be prejudiced by the act of the Court. If the Court record was not available then burden for proving that the application was within time or not could not be shifted on the applicant, rather the benefit, if any, ought to have been given to the applicant. The Court was required to at least reconstruct the record and thereafter give such finding but nothing has been done on this aspect of the case. Insofar as the contention of the learned counsel for the respondent is concerned, since the Court has not adjudicated the said application on the grounds so raised, therefore, no further discussion is required.

In view of herein above facts and circumstances of this case, instant Civil Revision application is allowed by setting aside the impugned order dated 19.02.2010 and the appeal of the applicant shall be treated as pending before the learned appellate Court who shall decide the same on merits in accordance with law.

Judge

9/4/17