

IN THE HIGH COURT OF SINDH AT KARACHI

HCA 103 of 2024

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

[Sahibzada Khan and another v. Juma Khan and others]

Date of hearing : 30.01.2025
Date of decision : 30.01.2025
Appellant : Through Mr. Bilal Khilji, Advocate
Respondent No.4 : Through Mr. Nadeem Khan, Advocate
Respondent Nos.1, 8, 9 & 10 : Through Mr. Muhammad Atiq Qureshi, Advocate

JUDGMENT

Muhammad Osman Ali Hadi, J: The Appellant has filed the instant Appeal against order dated 22.02.2024 (“**the Impugned Order**”), whereby his restoration application in Suit No. 1128 of 2008 under order 9 Rule IX Code of Civil Procedure, 1908, was dismissed (and hence this Suit (No. 1128/2008 remained dismissed for non-prosecution by previous order dated 09.02.2024).

2. Learned Counsel for the Appellant has premised his contentions mainly stating that if a suit is fixed at the stage of Final Arguments, it cannot be dismissed for non-prosecution. In support of his contentions, he has cited / relied upon the following judgments: PLD 1969 SC 270, PLD 2008 Karachi 103, Civil Petition No. 3597-L of 2023 & 2017 CLC (N) 129. He further contended that the Court ought not to look at previous instances / default etc. in the hearing of the case, and should base its decision (in such matters) on the situation which existed on that particular day, for which he has relied upon PLD 1965 SC 669.

3. Learned Counsel for the non-contesting Respondents, i.e. Respondents No. 1, 8, 9 & 10 has given his no-objection and supports the instant Appellant / Appeal.

4. Learned Counsel for the Respondent No. 4 (“**contesting Respondent**”) has strongly opposed the Appellant’s stance and has stated the matter has been pending for over sixteen years, and the Appellant has

failed to proceed without a reason, despite having been given repeated opportunities to do so, and hence the learned Trial Court was correct in dismissing the Suit for non-prosecution.

5. We have heard the contentions of the learned Counsels. The learned Single Judge dismissed the Suit on 09.02.2024, after which the Appellant filed an application under Order 9 Rule IX Code of Civil Procedure, 1908, which was subsequently dismissed by the learned Single Judge vide the Impugned Order. It is pertinent to mention the learned Single Judge provided cogent and exhaustive reasoning in his Order, which has not in our opinion been properly controverted by the Appellant. The Appellant's Counsel in his affidavit stated he was busy before two other benches on the said day and hence was unable to attend in time on the day the Impugned Order was passed. Be that as it may, such excuse cannot provide condonation for absence, particularly since the matter was pending for over sixteen years. Moreover, the learned Single Judge has in our opinion correctly pointed out the Appellant has failed to provide any satisfactory reasons for his non-appearance and lack of intent to proceed in the Suit.

6. We disagree with the Appellants' initial contention that suits at a stage of final arguments cannot be dismissed for non-prosecution, and the same should not be considered an absolute rule. Even in the judgments cited by learned Counsel for the Appellant, the Courts have held that matters fixed for final arguments should not be dismissed for non-prosecution where sound principles are not provided by the Trial Court. The Courts have opined that sufficient cause needs to be shown in cases of such dismissal, which as we have already stated the learned Single Judge has provided in the Impugned Order. The said case law relied upon by the Appellant can also be distinguished in the existing circumstances: 2017 CLC (N) 129 was not a case of final arguments but was fixed for recoding of evidence; in PLD 2018 Karachi 103 both parties remained absent and in PLD 1969 SC 270 the Supreme Court has held the Trial Court dismissed the matter in non-prosecution without providing sound reasoning. However, in the same case the Supreme Court also held that sufficient cause (required for dismissing a suit) was an open-ended proposition which could be invoked by the Court with proper reasoning. In essence, none of these judgments relied upon by the Appellant provide an absolute bar to dismissing a suit for non-prosecution at the stage of Final Arguments, but

merely provide certain guidelines and process for dismissal of suits, and hence do not support the contention of the Appellant.

7. In the instant case, the learned Single Judge has provided proper and cogent reasoning in the Impugned Order, explaining his rationale for dismissing the Suit. Though technicalities should not thwart justice, the legal maxim that *law aids the vigilant not the indolent* cannot be ignored. The Hon'ble Supreme, in the case of, *inter alia*, Rai Muhd. Riaz v Ejaz Ahmed (PLD 2021 SC 761) has held that provisions of Order 9 Rule IX CPC cannot be taken lightly, and where sufficient cause is not shown, the Courts are correct in dismissing matters in non-prosecution. The Apex Court even deprecated the practice of offering "last and final chance" for hearings, as the same results in willful disobedience and undue delays.

8. Moreover, if the argument of the Appellant being that suits cannot be dismissed for non-prosecution at the stage of final arguments was to be taken, this would make the provisions of Order 9 Rule VIII and IX CPC redundant, as the Court would not have any power to dismiss suits, which would be in contradiction to the statute.

9. In light of the foregoing, though we are of the opinion under law the trial court in correct circumstances holds the power to dismiss suits (including for non-prosecution at the stage of final arguments) as it has done in the instant matter. However, only in the interest of justice to ensure that a full and proper trial commences as has been pleaded by the Appellant, we will allow the instant Appeal only to the extent that the Suit is restored to its status subject to the Appellant paying the contesting Respondent No. 4 a sum of Rs. 500,000/- (Rupees Five Hundred Thousand Only) for costs incurred in the inordinate delay caused by the Appellant, within a period of fifteen (15) days from the date of this Order, otherwise it is hereby clarified the instant Appeal shall stand dismissed.

This Appeal stands disposed accordingly.

JUDGE

JUDGE

Karachi.

Dated: 01.2025