

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**Constitution Petition No. S-13 of 2024**

*(Asadullah Cahhajro Vs. Mst. Samina & others)*

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. For Orders on CMA No. 47/2024 (Ex./A)
2. For Orders on CMA No. 48/2024 (Stay)
3. for hearing of main case.

**ORDER.**

10-02-2025.

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Petitioner Asadullah has filed a Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, challenging the order dated 25-11-2023, passed by the III-Additional District Judge Khairpur in Family Appeal No. 47 of 2023. The challenged order dismissed an application filed under Order XLI Rule 19 read with Section 151 of the Code of Civil Procedure (CPC) as being time-barred, which reads as under:-

*“1. By this Order, I intend to dispose of an application U/O XLI Rule 19 read with section 151 CPD filed by the appellant through his counsel, with a prayer to set aside the order dated 17-06-2023 and restore the above Family Appeal on its original position.*

*2. Heard learned counsels for the parties as well as perused the material available on record.*

*3. Perusal of the record reflects that the appellant had filed an instant Family appeal against judgment & decree dated 23-12-2022 passed by the learned Civil/Family Judge, Khairpur but the same was dismissed in default for non-prosecution vide order dated 17-06-2023; hence appellant filed instant application for restoration of the appeal with delay on 30-09-2023. As per the record, sufficient time has been granted to the appellant to argue the matter on pointation of limitation, but he failed to argue the matter and on the contrary again called absent without intimation.*

*4. According to Article 168 of the Limitation Act, 1940, the time period of application for restoration of an appeal is 30 days, but in the present matter, the main appeal was dismissed in default on 17-06-2023 while the appellant filed an instant application for restoration on 30-09-2023 after*

*the lapse of 03-months & 13-days for which appellant has failed to explain each day of delay in filing instant application.*

*5. It is a settled principle of law that the delay of each day must be satisfactorily explained and ground on the basis of which condonation was sought must be recognized in law as a valid ground that sufficient cause for condonation of delay. The appellant, due to his own negligence and choice, did not file the restoration application within time; hence the huge delay in filing the restoration application could not be condoned without sufficient cause. Moreover, the Limitation period would start from the date of announcement of the order and not from the knowledge of the same whether a copy of such order was ready or not.*

*6. In the light of the above discussion, I have come to the conclusion that application U/O XLI rule 19 r/w Section 151 CPC is timed barred and the appellant has failed to explain each day of its delay, hence application U/O ELI rule 19 r/w section 151 CPC in handstands dismissed without no order as to costs”:*

The petitioner narrated that the impugned order is unlawful because the applicant/respondent's marriage was based on falsified documents, a matter currently under litigation. The petitioner further added that he was denied a fair hearing, resulting in the dismissal of his case and subsequently, the dismissal of his application for its reinstatement. Therefore, the petitioner requests the court to overturn both the order dated November 25, 2023, issued by the III-Additional District Judge Khairpur and the order dated December 19, 2023, issued by the trial court.

On previous hearing dates, the petitioner failed to appear, and the situation remains unchanged today. Therefore, this court is left with no alternative but to dismiss the case for lack of prosecution.

**Judge**