

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
High Court Appeal No.180 of 2024
(*Raja Arif Hussain & others Vs. Mrs. Roshan Bano & others*)

hg. case

1. For hg. of CMA No.144/2024(Contempt)
2. For orders on office objection
3. For hg. of main case
4. For hg. of CMA No.1065/2024

13.08.2025

Mr. Ahmed Ali Hussain, advocate for appellants
Mr. Asim Iqbal, advocate for respondent a/w Official Assignee Ch.
Waeem Iqbal
Mr. Muhammad Masood, advocate
Mr. Jan Khizer, advocate

JUDGMENT

Muhammad Iqbal Kalhoro, J:- This appeal impugns an order dated 02.04.2024 passed by learned Single Judge of this Court, dismissing application for restoration of the Suit No.1277/1989 dismissed in non-prosecution on 26.01.2016.

2. The ground iterated by learned counsel for the appellants in his arguments is that once the suit is fixed for evidence the same cannot be dismissed for non-prosecution and it has to be decided in terms of section 17 CPC. The law requires decision on merits rather than on technicalities. Appellants, who are plaintiffs, were not aware of the fixation of the case for evidence as their counsel had not intimated them about such fact.

3. His arguments have been rebutted vehemently by the Counsel for the other side. According to them, the suit was dismissed several times in the past and it was restored only after imposition of cost but still the plaintiffs did not learn the lesson and remained absent despite being given various chances. They have relied upon a decision in the case reported in **PLD 2021 Supreme Court 761** to support proposition that if no sufficient cause is shown for non-appearance of advocate and plaintiff before the Court, the suit cannot be restored.

4. We have heard counsel for the parties and perused material available on record. The suit filed for declaration, possession and permanent injunction is pending since 1989. On multiple occasions, plaintiffs were given chance to adduce evidence but to no avail, resulting in dismissal of the suit for non-prosecution. Learned counsel for the respondents have referred to various such orders and dates when the suit was fixed for evidence but due to non-

appearance of plaintiffs and their counsel, it was dismissed. And on one such occasion, it was restored only after cost of Rs.3000/- was imposed upon the plaintiffs. Be that as it may, we are aware that it is a settled proposition of law that a litigant, who is indolent, does not deserve help of the Court. In this case, the plaintiffs' qualification to come within such category *prima facie* is undisputed. But in order to afford a chance to them and resolve the controversy between the parties on merits once and for all, we have decided to entertain prayer of the plaintiffs and give them a last and final chance subject to certain conditions to adduce evidence and conclude the case within a reasonable time.

5. In these circumstances, we allow this appeal but subject to the cost of Rs.2 Million to be paid to the respondents within a period of 15 days. Besides, the appellants would be required to produce their evidence before the trial Court without fail in one month. If the appellants fail to deposit the cost within stipulated time or fail to produce evidence before the trial Court as required, this order would be deemed to have never been passed and the appeal would be considered to have been dismissed. In case of compliance, trial Court would be under obligation to expeditiously proceed with the matter, if possible on day-to-day basis, and decide it within a period of six **(06)** months.

This High Court Appeal is disposed of in above terms along with pending applications.

JUDGE

JUDGE

Rafiq/PA