IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HACJ
MR. JUSTICE IQBAL HAMEEDUR RAHMAN
MR. JUSTICE KHILJI ARIF HUSSAIN

Civil Appeals No. 510, 934/2012, 1247/2014 & 509/2006
(Against the judgment dated 9.2.2005, 23.10.2009, 9.3.2012 and 1.9.2014 of the Lahore High Court Lahore, Lahore High Court Rawalpindi Bench, Peshawar High Court Peshawar and Lahore High Court Lahore passed in C.R. Nos.1274/1998, 87/1998, 91/2000 and 405/2000, respectively)

Ghulam Qadir, etc. (in C.A. 510/2012)

Ayas Khan. (in C.A. 934/2012)

Akhtar Pervez Sethi, etc. (in C.A. 1247/2014)

Jan Muhammad through Attorney
Muhammad Khan. (in C.A. 509/2006)

Appellant(s)

Versus

Sh. Abdul Wadood, etc. (in C.A. 510/2012)

Muslim Khan (decd.) through L.Rs., etc. (in C.A. 934/2012)

Abdul Shakoor, etc. (in C.A. 1247/2014)

Ghulam Ali (decd.) through L.Rs., etc. (in C.A. 509/2006)

Respondent(s)

For the Appellant(s):

In C.A. 510/2012: Mr. Mujeeb ur Rehman, ASC

In C.A. 934/2012: Mr. Niaz Wali Khan, ASC

In C.A. 1247/2014: Mr. Gulzarin Kiyani, Sr. ASC

In C.A. 509/2006: Nemo

For the Respondent(s):

In C.A. 510/2012: Mr. Gulzarin Kiyani, Sr. ASC
Mr. Muhammad Munir Peracha, ASC

In C.A. 934/2012: Nemo

In C.A. 1247/2014: Mr. Muhammad Bashir Malik, ASC

In C.A. 509/2006: Ex-parte

Amicus Curiae: Syed Najam-ul-Hassan Kazmi, Sr. ASC

Date of Hearing: 28.04.2016.

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JUDGMENT

MIAN SAQIB NISAR, ACJ.- These appeals, by leave of the Court, are being disposed of together as they involve the same legal question as to whether a civil revision filed under Section 115 of the Code of Civil Procedure, 1908 *(CPC)* once admitted to regular hearing can be dismissed for non-prosecution or not.

Since the above proposition is common to all the matters, we intend to resolve the same before deciding the individual cases on their own merits.

2. The learned counsel for the parties have argued extensively for and against the proposition; their arguments and law cited in support thereof are summarized herein below. Their pleas/counter-pleas and the submissions of the learned *amicus curiae* are reflected in the reasons of this opinion.

The learned counsels who are against dismissal of a civil revision once it has been admitted to regular hearing have argued that the jurisdiction of the revisional court is supervisory in nature and when the court has once taken cognizance of an error of jurisdiction or material irregularity or illegality in the decision challenged in revision it becomes the beholden duty of the court to decide the matter on merits in order to correct such error. Reliance was placed upon the judgments reported as **Muhammad Sadiq Vs. Mst. Bashiran and 9 others (PLD 2000 SC 820)**, **Muhammad Yousaf and others Vs. Mst. Najma Bibi and others (PLD 2006 SC 512)**, **Rasheed Hussain Malik and another Vs. Mst. Hanifa Bai and others (2008 SCMR 1027)** and **Mandi Hassan alias Mehdi Hussain and another Vs. Muhammad Arif (PLD 2015 SC 137)**.

3. The contentions of the learned counsel in favour of dismissal of a civil revision for non-prosecution even after it has been admitted regular hearing may be summarized as :-

(i) A civil revision is dismissed for non-prosecution and/or restored under the inherent power of the court and not under a specific rule of the CPC;

(ii) When the revisional jurisdiction is exercised at the behest of a party, the revisional proceedings are akin to any other adversarial litigation between the parties and when the instigator fails to pursue the matter, it has to be dismissed for non-prosecution. But where the court itself calls for the record to examine any error contemplated by Section 115 of the CPC the matter should be disposed of on merits and not on account of the non-appearance of the party(ies);

(iii) The revisional court cannot be saddled with the duty to decide the matter on merits despite non-appearance of instigating party. An indolent/delinquent party should not be allowed a premium for his own acts/omissions to the prejudice of the other side.

In support of the above, reliance was placed upon **Abdul Rashid Vs. Mst. Saeeda Begum and another (1994 SCMR 1888)**, **V.R. Mall Vs. Sh. Muhammad Yusuf and another (PLD 1975 Lah 825)**, **Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat (AIR 1970 SC 1)** and **Dhondiba Appasaheb and another Vs. Wasudeo Anant Sherlekar and another (AIR 1957 Nag 83)**.

4. The crux of the arguments of the learned *amicus curiae* was that there cannot be an absolute rule that a revision petition can or cannot be dismissed for non-prosecution, instead it would depend on the facts and circumstances of each case. He argued that as there is no

corresponding provision to Order 41 Rule 9 of the CPC *(admission of an appeal)* in terms of admission of a civil revision, therefore mere admission does not necessarily imply that the revisional court has decided to examine and rectify an error in the impugned judgment/order. But where the court after examining the record opines in its admitting note that there is a *prima facie* case for exercise of revisional powers **then** the court should decide the case on merits rather than disposing of the same for non-prosecution. He relied upon the cases reported as **Jan Muhammad Vs. Muhammad Asghar (PLD 1981 SC 513)**, **Babii Vs. Mst. Niaz Bibi (PLD 1982 Lah 192)**, **Umar Khan Vs. Nasim Raza and others (1990 MLD 1062)**, **British India Navigation Company and another Vs. National Security Insurance Company Ltd. (1985 CLC 1799)**, **Muhammad Arab and 2 others Vs. Jaffery Muhammad Hassan (1983 CLC 335)**, **Farman Ali Vs. Muhammad Yousuf Ali (1990 CLC 1936)**, **Muhammad Suleman Vs. Wilayatullah Khan and 2 others (1990 CLC 110)**, **S. M. Abdullah & Sons Vs. Pakistan Mercantile Corporation Ltd. & another (PLJ 1977 Kar 190)**, **Musharraf Sultana Vs. Fazal Hussain and 9 others (1992 CLC 1394)**, **Abdul Rashid**'s case *(supra)*, **Province of Punjab through District Officer Revenue, Rawalpindi and others Vs. Muhammad Sarwar (2014 SCMR 1358)**, **Hafeez Ahmad and others Vs. Civil Judge, Lahore and others (PLD 2012 SC 400)**, **Mandi Hassan**'s case *(supra)*, **Federal Government of Pakistan and another Vs. Khurshid Zaman Khan and others (1999 SCMR 1007)**, **Muhammad Swaleh and another Vs. Messrs United Grain & Fodder Agencies (PLD 1964 SC 97)**, **Khan Bahadur**'s case *(supra)*, **Muhammad Sadiq**'s case *(supra)*, **Mst. Rabia Bibi and others Vs. Ghulam Rasool and others (2004 SCMR 394)**, **Farzand Ali and another Vs. Muhammad Rafique (2013 CLC 976)**, **Government of NWFP through Chief Secretary and 3 others Vs. Abdul Malik (1994**

SCMR 833), **Noor Akbar through Sardaran Mai and others Vs. Mst. Gullan Bibi (2005 SCMR 733)**, **Hakeem Abdul Wahab Shirazi Vs. Tariq Hussain and 2 others (1989 SCMR 699)**, **Hisaria Plastic Products, Kanpur Vs. Commissioner of Sales Tax, U.P., Lucknow (AIR 1982 All 185)** and **Jaswinder Kaur and others Vs. Jatinder Pal Singh etc. (58 (1995) DLT 155)**.

5. Before proceeding further to examine the proposition we find it expedient to reproduce the provisions of Section 115 of the CPC which read as follows:-

> *"**115. Revision.**—(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—*
>
> *(a) to have exercised a jurisdiction not vested in it by law, or*
>
> *(b) to have failed to exercise a jurisdiction so vested, or*
>
> *(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,*
>
> *the High Court may make such order in the case as it thinks fit.*
>
> *Provided that, where a person makes an application under this sub-section, he shall, in support of such application, furnish copies of the pleadings, documents and order of the subordinate Court, and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court,*
>
> *Provided that such application shall be made within ninety days of the decision of the Subordinate*

> *Court which shall provide a copy of such decision within three days thereof, and the High Court shall dispose of such application within three months.*
>
> *(2) The District Court may exercise the powers conferred on the High Court by sub-section (1) in respect of any case decided by a Court subordinate to such District Court in which no appeal lies and the amount or value of the subject-matter whereof does not exceed the limits of the appellate jurisdiction of the District Court.*
>
> *(3) If any application under sub-section (1) in respect of a case within the competence of the District Court has been made either to the High Court or the District Court, no further such application shall be made to either of them.*
>
> *(4) No proceedings in revision shall be entertained by the High Court against an order made under sub-section (2) by the District Court."*

6. A comparison of appeals and revisions will serve to show why civil revisions can be dismissed for non-prosecution even after being admitted to regular hearing. They are simply two types of remedies available to persons aggrieved of a judgment/order. An appeal is the recourse adopted by a person to a superior court vested with the jurisdiction to reconsider a decision of a subordinate court, with the aim of attaining a reversal/modification of such decision. An appeal is not merely a matter of procedure but a substantive right. It is the continuation of a suit and during appellate proceedings the entire matter stands reopened. The jurisdiction of an appellate court can be invoked by a person who believes that the subordinate court has erred in law or in fact whilst passing the judgment/order under appeal. On the other hand a

revision also involves an exercise of reconsideration/re-examination of the judgment/order of a subordinate court but **only to the extent** that it falls squarely within the parameters of Section 115 of the CPC. Although the matter of revision is not a mere privilege afforded to the aggrieved person but also a right this revisional power remains discretionary. The function of the revisional court is to ensure the proper administration of justice through the proper exercise of jurisdiction, procedural accuracy, correctness of the decision and legality thereof by the subordinate court. If the revisional court is satisfied that the subordinate court has not erred in this regard and the decision is sound in law, then it will not reverse or modify the decision solely on the basis that the subordinate court could have reached a different conclusion on merits.

7. The scope of an appeal is much wider and being available as of right, it stands on a higher pedestal than a revision petition. How then is it conceivable that an appeal can be dismissed for non-prosecution even after being admitted to regular hearing, but not a revision, as contended by the learned counsels advocating against such dismissal(s) of revision petitions? We are not persuaded by the argument that because the jurisdiction exercised under Section 115 of the CPC is supervisory, therefore once the *(revision)* petitioner has brought the matter to the notice of the court and it has been admitted to regular hearing, it is thereafter between the superior court and the subordinate court, and the petitioner has no role to play whatsoever. In fact, the admission of a civil revision petition is analogous to a leave granting order of this Court which means that there is a point(s) which needs consideration and if the appellant does not appear after leave is granted, it *(appeal)* can be dismissed for non-prosecution and not necessarily on merits. The same reasoning applies to civil revisions. Supervisory jurisdiction does not mean that the revisional

court cannot dismiss a civil revision for non-prosecution. For that matter, the appellate jurisdiction also forms part of the supervisory jurisdiction of the court but it is not the case that appeals cannot be dismissed for non-prosecution. Order XLI Rule 17 allows the appellate court to dismiss an appeal for non-prosecution and Rule 19 of the same order provides for re-admission of an appeal dismissed under Rule 17 *ibid* subject to the appellant showing "sufficient cause" for non-appearance. There are no corresponding provisions regarding civil revisions. Nonetheless there is no bar whatsoever contained in the positive law, i.e. CPC, preventing the revisional court from dismissing a civil revision for non-prosecution. The revisional court can regulate admission, dismissal for non-prosecution and restoration thereof in the same manner as the trial *(see Order IX Rules 8 and 9 of the CPC which provides for dismissal for non-prosecution and restoration thereof, respectively)* and appellate courts do, by virtue of its *(revisional court)* inherent powers under Section 151 of the CPC, as has been held by this Court in numerous judgments, including **Mandi Hassan**'s case *(supra)* and **Karamat Hussain and others Vs. Muhammad Zaman and others (PLD 1987 SC 139)**. Even otherwise, as held in **Abdul Rashid**'s case *(supra)*, as per Section 141 of the CPC which provides that *"the procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction"*, the revisional court can follow the procedure(s) provided in Order IX, Rules 8 and 9 *ibid* which pertain to *(dismissal for non-prosecution and restoration of)* suits, for the regulation of its own revisional jurisdiction.

8. As held in various judgments of this Court, there are two aspects to the jurisdiction of the revisional court, firstly, where the revisional court itself takes cognizance of a matter while exercising its *suo motu* powers under Section 115(1) of the CPC, and secondly, where a

person brings the matter to the notice of the revisional court under the first proviso to Section 115(1) *ibid*. This bifurcation is significant. The matter is only between the revisional court and the subordinate court when the court itself invokes its revisional jurisdiction. However in the second instance, it is essentially adversarial litigation and in that eventuality, although the court is still acting in its supervisory jurisdiction, the revision can certainly be dismissed for non-prosecution. To hold otherwise would be incorrect for several reasons. Firstly, it would lead to the absurd situation where a person having once invoked the revisional jurisdiction of the court by filing a civil revision subsequently admitted to regular hearing, would be unable to withdraw such revision. Besides, it would negate the very purpose and mandate of the first proviso to Section 115(1) of the CPC under which any person can file a revision application. On the basis of this reasoning, revisional courts would not be able to dismiss revision petitions rendered infructuous in light of a compromise entered into between the parties. Secondly, such an interpretation presumes the provisions of Section 115 of the CPC, which employ the word “may”, are mandatory thereby reading into the statute something which is not there which *(exercise)* in turn is impermissible. Thirdly, it would render superfluous the centuries-tested legal maxim *vigilantibus non dormientibus subvenit lex*, meaning that law aids the vigilant, not the indolent. The revisional court should only exercise its discretion in favour of those who conscientiously pursue their rights and not those who sleep over them which conduct would indubitably disentitle such persons to discretionary relief. The revisional court should not be compelled to decide a civil revision on merits in the absence of either party(ies) just because it has been admitted to regular hearing. The court should not be rendered a slave to a person who files a revision petition

and subsequently chooses not to appear before the revisional court due to disinterest or ignorance/indolence, and neither should such person be awarded a premium/privilege in this regard, as this would result in *(possible)* injustice to the contesting party. Adopting such a course would inevitably result in an undesirable increase in the caseload of the *(overburdened)* courts as numerous revision petitions would remain pending. The courts must consider the competing interests of both parties in the light of the principles of proportionality and balancing. Dismissing a revision petition due to non-appearance of the petitioner(s) is a clear manifestation of the act of balancing by the revisional court in performance of its judicial and discretionary functions. The dismissal can always be challenged by the petitioner subject to him establishing "sufficient cause" for his *(or his counsel's)* non-appearance on the date his case was dismissed for non-prosecution. The revisional court in exercise of its inherent jurisdiction may restore the petition.

9. We now attend to the case law which the learned counsel stated to be directly on point. In **Muhammad Sadiq**'s case *(supra)* while refusing leave to appeal this Court held as under:-

> *"5.* ***At the very outset it may be observed that dismissal of a civil revision after its admission by the Court seized with it for non-prosecution is not legally well-recognized*** *for the reason that jurisdiction of a revisional Court under section 115, C.P.C. is invoked by an aggrieved person to point out illegalities or irregularities or the jurisdictional defects in the proceedings and the orders passed by the subordinate forums. Therefore, on entertaining a revision petition, Court exercises its supervisory jurisdiction to satisfy itself as to whether jurisdiction has been exercised properly and whether proceedings*

> *of the subordinate Courts do suffer or not from any illegality or irregularity. In other words, after filing a revision, matter rests between the revisional and subordinate Courts. To substantiate this argument reference may be made to Naoomal Tourmal v. Tarachand Sobharaj and another AIR 1933 Sindh 200.* ***Thus is advised that the Court after having entertained a civil revision instead of dismissing it in default, may make efforts to dispose it of in accordance with the parameters laid down by section 115, C.P.C.****"*
>
> *(Emphasis supplied)*

Muhammad Yousaf's case *(supra)* happens to be the leave granting order dated 29.3.2006 in Civil Appeal No.509/2006. The case of **Rasheed Hussain** *(supra)* is also a leave granting order. In light of the dictum laid down in the judgments reported as **Muhammad Tariq Badr and another Vs. National Bank of Pakistan and others (2013 SCMR 314)** and **Haji Farman Ullah Vs. Latif-ur-Rehman (2015 SCMR 1708)**, the noted cases *[**Muhammad Sadiq** (supra), **Muhammad Yousaf** (supra) and **Rasheed Hussain** (supra)]* are not the law enunciated by this Court and hence do not serve as precedent. Nevertheless, in light of our findings in the earlier part of this opinion, we do not find **Muhammad Sadiq**'s case to be good law to the extent that it holds that a civil revision cannot be dismissed for non-prosecution and should instead be decided on merit, as it leaves absolutely no room for the revisional court to exercise its discretionary powers rendering them *(discretionary powers)* nugatory and redundant.

10. In **Khan Bahadur**'s case *(supra)* cited by the learned *amicus*, this Court held as under:-

> *"The mention of Khan Bahadur who was allegedly dead at the time of institution of revision but admittedly*

> *alive at the time of the announcement of the judgment of the appellate Court, impugned before the High Court, was apparently a bona fide mistake and* ***unless the rigour of procedural law had prevented it, the High Court was required to dispose of the same on merits.*** *There is no dearth of authorities on this proposition that law requires decision of disputes on merits and technicalities have to be avoided which hamper justice so far as possible."*
>
> *(Emphasis supplied)*

The issue involved in the judgment *ibid* was that a revision petition filed against a deceased person *(who was alive at the time of the decision of the appellate court)* was a *bona fide* mistake and thus, with no procedural law standing in the way of the revisional court, the court should have disposed of the revision petition on merits. However the precise proposition as to whether a civil revision can be dismissed for non-prosecution once it has been admitted to regular hearing was neither an issue nor a moot point in **Khan Bahadur**'s case *(supra)*, and it is not the ratio of the said judgment that all of the procedural law under the CPC should not be followed in letter and spirit. Be that as it may, delinquent and indolent persons are in any eventuality disentitled to any favourable discretion to the prejudice and detriment of the opposite party. Therefore we do not find that the said judgment comes in the way of the proposition involved in the instant matter.

11. If the admission of a revision petition for regular hearing is not reason enough to save it from dismissal for non-prosecution then the question that arises is, where is the line in the sand to be drawn? In our candid view, the revisional court is not to dismiss a revision petition for non-prosecution but to decide it on merits only where the court has taken cognizance of the matter of its own, generally called its *suo motu* powers.

When the revisional court decides to take up a matter *suo motu*, it should have necessarily done so by a conscious application of judicial mind and a thorough examination of the record. Where the revisional court has taken up the matter at the behest of a person, the court has the power to dismiss the civil revision for non-prosecution even after it has been admitted to regular hearing, and is not bound to decide the same on merits.

12. Having resolved the proposition at hand, we proceed to decide each case on its own merits.

Civil Appeal No.510/2012

13. The relevant facts are that the appellants filed a civil revision petition before the learned High Court in terms of Section 115 of the CPC which was admitted to regular hearing on 21.1.2000. The revision petition was dismissed for non-prosecution on 9.6.2000. The appellants filed an application for restoration *(C.M. No.1212-C/2000)* and the civil revision was restored on 11.4.2001. The civil revision was again dismissed for non-prosecution on 23.9.2003. The appellants moved another application for restoration *(C.M. No.588/C/2003)* on 26.9.2003 which was also dismissed for non-prosecution on 16.6.2004. Thereafter the appellants filed an application for restoration of the noted application for restoration *(C.M. No.489/2007)* along with an application under Section 5 of the Limitation Act, 1908 *(Limitation Act)* read with Section 151 of the CPC for condonation of delay *(C.M. No.490/2007)* on 15.11.2007, which were both initially allowed and C.M. No.588/C/2003 was restored *vide* order dated 1.4.2008 which was challenged by the respondents before his Court *(through Civil Appeal No.1514/2008)*. This Court *vide* order dated 18.6.2009 set aside the order dated 1.4.2008 and remanded the matter back to the High Court for

decision afresh on C.Ms. No.489 and 490/2007. The learned High Court *vide* impugned judgment dismissed the two applications on the grounds that C.M. No.588/C/2003 for restoration of the civil revision was rightly dismissed for non-prosecution due to the negligence/indolence of the revision petitioners *(instant appellants)*, and that C.M. No.489/2007 for restoration of the restoration application *(C.M. No.588/C/2003)* was moved beyond the limitation period of three years prescribed by Article 181 of the Limitation Act and that C.M. No.490/2007 did not establish any sufficient cause for condonation of delay. Aggrieved, the appellants challenged the order of the revisional court before this Court and leave was granted *vide* order dated 30.5.2012 in the following terms:-

> *"i) whether a revision petition could be dismissed for non-prosecution once it has been admitted for regular hearing ?*
>
> *ii) whether a revision petition dismissed for non-prosecution could be restored by invoking inherent powers of the Court ?*
>
> *iii) whether exercise of inherent powers of the Court could be circumscribed by the provisions of the Limitation Act ?*
>
> *iv) whether an application seeking restoration of a revision petition would also be regulated by inherent powers of the Court and not Article 181 of the Limitation Act, if and when is dismissed non-prosecution ?*
>
> *v) whether dismissal of a revision petition and that of an application for its restoration can be treated alike under any interpretation of law and procedure ?*
>
> *vi) whether limitation in such cases can be considered as a technicality of mere form ?"*

14. Heard. After being admitted to regular hearing, the revision petition of the appellants was dismissed twice for non-prosecution once on 9.6.2000 and then on 23.9.2003. Despite the fact that the name of the counsel of the revision petitioners *(instant appellants)* appeared in the cause list of the court, he did not appear, and neither did the appellants nor anyone on their behalf and to this extent the learned High Court committed no illegality in dismissing the civil revision for non-prosecution. Furthermore, C.M. No.588/C/2003 for restoration of the civil revision *(after it was dismissed for non-prosecution for the second time on 23.9.2003)* was also dismissed for non-prosecution. Not only that, C.M. No.489/2007 for restoration of C.M. No.588/C/2003 was barred by about 152 days as it was filed beyond the limitation period of three years prescribed by Article 181 of the Limitation Act, and no ground except that the delay was unintentional has been pleaded in the application for condonation of delay which as per the settled law does not constitute a "sufficient cause" within the purview of Section 5 of the Limitation Act. The above facts clearly reflect the appellants' conduct which smacks of sheer negligence/indolence, disentitling him to any discretionary relief. Therefore, the learned High Court rightly dismissed the civil revision for non-prosecution and thereafter through the impugned judgment has rightly dismissed the application for condonation of delay and the application for restoration of the application for restoration of the civil revision. In light of the above, this appeal is dismissed. Though the learned counsel has only confined himself to the first point and not pressed the other points on which leave was granted, we find it appropriate to briefly express our views on such points as well. In this context we find that as there are no specific provisions in the CPC for the dismissal and for the restoration of a civil revision, therefore, the same *(civil revision)* can both be dismissed and

restored by the court while exercising its inherent powers and resort may also be made to Section 107 of the CPC. As there is no specific article of the Limitation Act which would prescribe the limitation period for the exercise of such inherent power of the court, therefore the residuary Article 181 of the Limitation Act shall be attracted. And this is the ratio of **Mandi Hassan**'s case *(supra)* as far as the limitation for an application for the restoration of a civil revision *(dismissed for non-prosecution)* is concerned. This Article also applies to the application filed for the restoration of the application for restoration of a civil revision. It may be added here that for allowing or refusing both the said applications the rule of "sufficient cause" as envisaged by Section 5 of the Limitation Act and its principles shall be attracted, regardless of whether such section is applicable or not. Regarding the last point *(leave granting)*, it is categorically held that limitation is a part of positive law, which has to be construed and applied as per the settled principles which are provided in numerous dicta of the Supreme Court; it has to be given due effect as per the mandate of law, therefore it is held that "limitation is not a mere technicality of form".

Civil Appeal No.934/2012

15. None appeared on behalf of the respondents, who are proceeded against ex-parte.

16. This appeal entails the following facts; the suit for possession, mandatory injunction etc. filed by the predecessor-in-interest of the respondents against the appellant was dismissed on 10.1.1998. The respondents' appeal was allowed on 13.1.2000 and the suit was decreed. Aggrieved, the appellant filed a civil revision before the learned High Court on 2.3.2000 which was admitted to regular hearing on 27.3.2000 and

finally dismissed for non-prosecution on 3.8.2006. The appellant filed an application for restoration of the civil revision along with an application for condonation of delay on 29.4.2011. The learned High Court through the impugned judgment dismissed the applications for restoration and condonation on the ground that the appellant was unable to establish sufficient cause for condonation of delay in filing of the application for restoration of the civil revision. Hence, the instant appeal by the leave of the Court dated 9.10.2012 which reads as under:-

> *"The main contention of the leaned counsel for the petitioner was that though the petitioner filed an application for restoration of revision petition after a year or so, none the less, it being regulated by Article 181 of the Limitation Act cannot be held to be barred. The learned counsel relies on the case of* ***"Muhammad Sadiq. Vs. Mst. Bashir and 9 others"*** *(**PLD 2000 Supreme Court 820**). He next contended that where decision on merits is more cherished goal of law and party at fault can be adequately punished by imposition of cost, dismissal for non-prosecution would be too harsh a measure in the circumstances of the case.*
>
> *2. Points raised need consideration. We, therefore grant leave to appeal, inter-alia, to consider the same. It be clubbed with Civil Appeal No.510 of 2012 in Civil Petition No.436 of 2010 titled as* ***"Ghulam Qadir and others. Vs. Sh. Abdul Wadood and others".*** *"*

17. Heard. After the civil revision was admitted to regular hearing, it was dismissed for non-prosecution on 3.8.2006, which the learned High Court was amply empowered to do in light of our view expressed in the earlier part of this opinion. After such dismissal, the appellant filed an

application for restoration of the civil revision on 29.4.2011, i.e. 629 days beyond the three year limitation period stipulated in Article 181 of the Limitation Act. With respect to the ground propounded in the application for condonation of delay in filing of the restoration application viz. that the appellant was not aware of the dismissal of the revision petition, suffice it to say that it is unfathomable and frankly beyond our comprehension as to how a litigant *(or his counsel)* would be unaware of the dismissal of his case for approximately five years, or 1724 days to be precise. Furthermore, regarding the plea submitted in the application for restoration that the appellant's default in appearance was not wilful rather was due to non-service, we may observe that the appellant's counsel had been appearing in the past when the civil revision was fixed for hearing, and there is no requirement of law that the parties have to be served for every date of hearing. It is not the case of the appellant that the matter was not notified in the cause list issued by the court or that the name of their counsel was either omitted or there was any other error in this context. On the contrary it would appear that a notice was specifically sent by the office to the appellant's counsel which was served upon him. The order of dismissal of the revision petition dated 3.8.2006 clearly postulates *"inspite (sic in spite) of service of the counsel for the petitioner, no body (sic nobody) is present on his behalf. Dismissed for non-prosecution"*. Moreover, we are not persuaded that the appellant is entitled to discretionary relief after hibernating for so many years and finally waking up to belatedly claim restoration of his civil revision. In light of the above, we find that the learned High Court was correct in dismissing the civil revision for non-prosecution and refusing to condone the delay and refusing to restore the civil revision. This appeal is hereby dismissed.

Civil Appeal No.1247/2014

18. The facts of this case are that the civil revision filed by the respondents was admitted to regular hearing by the learned High Court on 9.3.2000, which was dismissed for non-prosecution on 19.11.2004. The respondents moved an application for restoration of the same on 10.5.2010 along with an application of condonation of delay, which *(applications)* were dismissed on 11.5.2010. Aggrieved, the respondents challenged this order before this Court by filing Civil Appeal No.529-L/2013 which *(appeal)* was allowed *vide* judgment dated 7.11.2010 because the application for restoration filed by the respondents which was accompanied by an affidavit was dismissed in *limine* without seeking a reply from the appellant *(who was a respondent in the said civil revision)* and the matter was remanded to the learned High Court to decide the matter afresh after the reply of the respondent. The learned High Court through the impugned judgment has accepted the said application holding that as the revision was admitted to regular hearing it could not, in the light of the law laid down in **Muhammad Sadiq**'s case *(supra),* be dismissed for non-prosecution; besides it was within time as the respondents learnt about the dismissal on 14.4.2010 through the *patwari* and the limitation would start from the date of knowledge; it is also held that a sufficient cause has been made out because the counsel for the respondents did not receive the cause list. The impugned judgment was challenged before this Court, and leave was granted *vide* order dated 29.9.2014 to consider the following:

> *"Learned counsel for the petitioner contends that the Civil Revision was admitted for regular hearing on 9.3.2000; that it was dismissed for non-prosecution on 19.11.2004; that an application for restoration was*

> *filed on 10.5.2010 after about 5 years 6 months and 11 days along with an application under Section 5 of the Limitation Act; that the Limitation Act is not applicable as it has been held by a larger Bench of this Court in Hafeez Ahmed Vs. Civil Judge (PLD 2012 SC 400); that no valid ground was given for condonation of delay; that each and every day was to be explained by the respondents for delay in filing the application for restoration. Learned counsel further contended that leave has already been granted in Civil Appeal No. 510/2012 on the same point and the matter has been referred to the larger Bench and other cases involving similar controversy are also directed to be clubbed with. In view of the above, leave to appeal is also granted in this petition. The main appeal shall be listed along with Civil Appeal No. 510/2012 and other cases of similar nature. In the meanwhile, the proceedings before the learned High Court shall remain suspended."*

19. Heard. As we have held in the earlier part of this opinion, the revisional court can dismiss a revision petition for non-prosecution despite its admission for regular hearing when the jurisdiction of the revisional court was invoked by a party, therefore the order of dismissal dated 19.11.2004 was valid and the reliance placed upon **Muhammad Sadiq**'s case *(supra)* by the learned High Court in the impugned order is misplaced. As regards the reasons for non-appearance of the respondents or their counsel on 19.11.2004, it is their case that the counsel shifted his office and did not receive the cause list *(the affidavit of the counsel has not been filed by the respondents but that of a clerk)*; it is not the case of the respondents that the name of the counsel was misprinted or not mentioned at all in such list; there is no mention as to when the office was allegedly changed; it is also not established or stated that during the long period the respondents got

in touch to find out the fate of their case. It is baldly alleged that they learnt about the dismissal from the *patwari* but there is no affidavit of the *patwari* in this regard. These aspects have not been considered by the learned High Court and an application time barred by 871 days has been allowed predominantly on the basis of **Mohammad Sadiq**'s case *(supra)* which we have declared is not the correct enunciation of law. The non-appearance of the respondents for no justifiable reason, along with the immense delay in filing the application on account of the alleged ignorance of the respondents which has not been so proved on the record does not warrant exercise of discretion in their favour. The learned High Court has seriously erred in restoring the respondents' civil revision by allowing the application for condonation of delay and the application restoration of the civil revision, in light whereof, this appeal is allowed and the impugned judgment is hereby set aside.

Civil Appeal No.509/2006

20. The facts of this appeal in brief are that the appellant's civil revision before the learned High Court was dismissed for non-prosecution on 13.9.2002. He moved an application for its restoration on 7.2.2003 which was dismissed by the learned High Court *vide* the impugned judgment on the ground that the application was filed after 4 months and 23 days after the date of dismissal of the revision petition. The application was returned by the office with some objections and was re-filed on 12.5.2004 after a lapse of 1 year 2 months and 21 days, which is beyond the period of limitation as per the law laid down in the cases reported as **Said Ali Vs. Safdar Ali and others (2004 SCMR 387)** and **Allah Bachai and others Vs. Fida Hussain and others (2004 SCMR 615)** wherein it was held that Article 181 of the Limitation Act would not apply. Leave was

granted in this case to consider whether the provisions of Article 181 *ibid* are attracted or not. This appeal was tagged with the other cases seemingly on the proposition as to whether a civil revision once admitted for regular hearing cannot be dismissed for non-prosecution. We have already settled the issue though this opinion however the issue regarding the application of Article 181 of the Limitation Act stands finally settled in the law declared by this Court in **Mandi Hassan**'s case *(supra)*. The case of **Allah Bachai** *(supra)* has been declared *per incuriam* while the decision in **Said Ali**'s case *(supra)* is a leave refusing order which is not the enunciation of law by this Court. In light of the above, we could have thought of hearing the matter, but as none represents the appellant we have no other option except to dismiss this appeal for non-prosecution.

21. To summarize, Civil Appeals No.510/2012 and 934/2012 are dismissed, Civil Appeal No.1247/2014 is allowed and Civil Appeal No.509/2006 is dismissed for non-prosecution.

JUDGE

JUDGE

JUDGE

Announced in open Court
On **8.6.2016** at **Lahore**
Approved for Reporting
*Waqas Naseer/**