

Form No: HCJD/C-121
ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

F.A.O No. 96 of 2014

Muhammad Nazeer
Vs
Mst. Zahida Parveen, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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(8) 31-10-2019. Raja Habib ur Rehman, Advocate for the
appellant.
M/s Muhammad Saeed Raja and Yasir Ali Raja,
Advocates for the respondent.

This appeal is directed against order,
dated 29.10.2014, whereby the learned
District Judge East-Islamabad has dismissed
the appellant's application which was filed
under Order IX Rule 13 of Civil Procedure
Code, 1908 (hereinafter referred to as "**CPC**").

2. The facts, in brief, are that at the time
when the impugned order, dated 29.10.2014,
was passed, the status of the appellant was
that of an absconder declared as such by a
competent court. The application of the
appellant was dismissed by the learned District
Judge on the sole ground that the latter was
declared an absconder at the relevant time.
The appellant was seeking setting aside ex-
parte judgment and decree, dated 04.07.2012.
The application under Order IX Rule 13 of CPC
was filed on 07.04.2014.

3. Admittedly, at the time of filing of the application and passing of the impugned order, dated 29.10.2014, the appellant was an absconder duly declared as such by a competent court. To this extent the impugned order, dated 29.10.2014, does not suffer from any legal infirmity requiring interference by this Court. This Court is also not competent to condone the abscondance of the appellant. Reliance is placed on the case titled "*The State through National Accountability Bureau, Islamabad Vs Haji Nasim ur Rehman*" [PLD 2005 S.C. 270]. The appellant later surrendered himself in 2015 before the competent court. This Court is satisfied that the impugned order does not suffer from any legal infirmity. Nonetheless, the appellant, may, if so advised, file a fresh application under Order IX Rule 13 of CPC along with an application for condonation of delay. In case such an application is filed, then the competent court is expected to take into consideration, inter alia, the fact that the appellant has surrendered himself and is being proceeded against.

3. This appeal is accordingly disposed of.

CHIEF JUSTICE