

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 65/2021

Al-Khaleej Exchange Company-B (Pvt.) Limited.

Versus

Federation of Pakistan through Secretary, Finance Division & another.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(03)	17.02.2021	Mr. Rizwan Faiz Muhammad, Advocate for the applicant.

C.M. No.764/2021

Through this C.M., the applicant seeks restoration of the main writ petition, which was dismissed vide order dated 10.02.2021.

2. The application for restoration states the following:-

“2. that, there is sufficient cause for non-appearance by the petitioner’s counsel, which was otherwise unintentional, and in obligation to a call for strike by the Islamabad High Court Bar Association, so directed by the Islamabad Bar Council, the contravention of which would have attracted disciplinary proceedings against any counsel appearing on the date. Notwithstanding, even the petitioner himself was unable to access the Hon’ble High Court due to the security cordon, under the circumstance.

“3. that, the dismissal for non-prosecution dated 10th February was unjust, unfair, and disproportionately harsh, and that it had only been the second date fixed for the case with previous order for submission of reply by the respondents.”

3. The main writ petition was dismissed by order dated 10.02.2021, which stated the following:-

“The case has been called out twice, once at its own turn and second time after exhausting the cause list. Name of the learned counsel for the petitioner appears in the cause list. Neither the petitioner nor his counsel has appeared. It seems that the petitioner is no more interested in pursuing his case.

2. In view of above, instant petition stands **dismissed for non-prosecution.**”

4. Learned counsel for the petitioner has admitted that he deliberately did not appear before this Court on the ground that a strike had been called by the Islamabad High Court Bar Association on the direction of the Islamabad Bar Council, which would constitute “sufficient cause for non-appearance” as appearing before this Court might have attracted disciplinary proceedings against him.

5. This application has been filed under Order IX Rule 9 of CPC, pursuant to which the petitioner is required to satisfy the Court that “there was sufficient cause for non-appearance when the case was called for hearing”. The content of the application thus contains admission that the learned counsel for the petitioner was aware of the hearing and did not appear deliberately due to the strike called by the Islamabad High Court Bar Association and the Islamabad Bar Council.

6. The questions that arise in view of the arguments made for establishing “sufficient cause for non-

appearance of the learned counsel for the petitioner” are the followings:-

- (i) Does the Legal Practitioners and Bar Councils Act, 1976, vest any power in the Islamabad Bar Council or the Islamabad High Court Bar Association to issue a call for strike, mandating lawyers not to appear before Courts, subject to the threat of penal and disciplinary action?
- (ii) While the license of a lawyer can be suspended and he can be removed from practice on the ground that he has committed grave indiscipline or grave misconduct, does appearing in Court in face of a strike called by a Bar Council or a Bar Association amount to grave indiscipline or grave misconduct for purposes of Section 41 read together with Rule 175-A of the Legal Practitioners and Bar Councils Act, 1976, attracting penal consequences?
- (iii) In view of Rule 166 in Chapter XII of the Legal Practitioners and Bar Councils Act, 1976, which mandates an advocate to be present in Court when his case is called, would refusal to appear on ground of strike not constitute grave indiscipline or grave misconduct for purposes of Section 41 of the Legal Practitioners and Bar Councils Act, 1976, rendering the lawyer in question liable for disciplinary proceedings and penal action under Section 41 and 54 of the Legal Practitioners and Bar Councils Act, 1976?
- (iv) Does the Legal Practitioners and Bar Councils Act vest in a Bar Council the

authority to issue mandatory instructions to strike court proceedings which could render provisions of the CPC, including Order XI Rule 9, nugatory?

- (v) Would a mandatory call to strike court proceedings issued by a bar council constitute "sufficient cause" for grant of adjournment by courts for purposes of Section 35A of the CPC, promulgated through the Cost of Litigation Act, 2017, in view of the legislative intent and purpose of such statutory provision?
- (vi) By refusing to appear before the Court on the ground of a call to strike by a Bar Council or a Bar Association would the lawyer, breach "the Canons of Professional Conduct and Etiquettes of Advocates", and would he/she undermine the right of access to justice of parties before the Court, which right is guaranteed under the Constitution and forms the *raison d'être* for the establishment and existence of the judicial arm of the state?
- (vii) If a Bar Council has the power and authority to issue calls to strike court proceedings at will resulting in the suspension of the same, would the automatic grant of adjournments not fall foul of Article X of the Code of Conduct for Judges issued under Article 209 of the Constitution which states that: "In this judicial work a Judge shall take all steps to decide cases within the shortest time, controlling effectively efforts made to prevent early disposal of cases and make every endeavor to minimize suffering of litigants by deciding cases expeditiously through proper written

judgments. A Judge who is unmindful or indifferent towards this aspect of his duty is not faithful to his work, which is a grave fault”?

(viii) If it is assumed that bar councils have the right to issue mandatory calls for striking court proceedings, subject to penalty attaching to lawyers for non-observance, wouldn't compliance with such order by licensed lawyers result in the shutdown of the judicial organ of the state, even if temporarily? Can such a situation be countenanced when under the scheme of the Constitution, the judiciary is one of the three pillars of the state and the machinery for enforcement of fundamental rights of citizens?

(ix) If a lawyer chooses to strike by refusing to appear before the Court, would he render himself liable for obstruction of justice and aiding and abetting denial of timely justice caused due to incessant delay in its dispensation?

7. When asked if non-appearance on the ground of a strike called by the Bar Council or Bar Association is “sufficient cause” for purposes of Order IX Rule 9 of CPC, the learned counsel for the applicant submits that he will not press this ground and only press the alternative ground taken up in the application that the petitioner could not appear before the Court due to the security cordon around the Court on the said date and on such basis the main writ petition be restored in the interest of justice. Whether or not the inability of a party to appear in person is sufficient cause for purposes of an

application to restore a petition under Order IX Rule 9, when the party has a duly appointed pleader or counsel who is on notice and does not appear before the court, would thus also need to be determined.

8. Office is directed to issue notice to the respondents for 25.02.2021, when the counsel for the parties will assist this Court on the questions listed in para-6 above.

9. As the instant application involves a strike call issued by Islamabad Bar Council, which was sought to be enforced by Islamabad High Court Bar Association, and the adjudication of the application requires interpretation of provisions of the Legal Practitioners and Bar Councils Act, 1976, involving the authority and responsibility of the Islamabad Bar Council and duties of the Islamabad High Bar Association in relation thereto, office is directed to issue notices to the Islamabad Bar Council, through its Vice Chairman, and the Islamabad High Court Bar Association, through its President, to appear on the next date of hearing to assist this court, and also send them a copy of this order along with a copy of C.M. No. 764/2021.

10. This application involves interpretation of the right of citizens to access to justice guaranteed under Article 9 of the Constitution as well as their right to be treated in accordance with law under Article 4 of the Constitution. Office is thus directed to also issue notice to the Advocate General for purposes of Order XXVIIA Rule 1 of CPC.

11. The Court also appoints Mr. Makhdoom Ali Khan, Sr. ASC, Mr. Ali Zafar ASC, Mr. Salman Akram Raja, ASC and Mr. Afnan Karim Kundi, ASC as amici curiae to assist this Court in relation to the questions framed in para. 6 above. The court would not wish to tax their time by requesting them to appear for assistance in person and would be grateful if they could send in amici briefs addressing the said questions by the next date of hearing. The office is directed to transmit a copy of this order along with a copy of C.M. No. 764/2021 to the learned amici.

(BABAR SATTAR)
JUDGE

A. Rahman Abbasi