

Form No: HCJD/C-121

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Civil Revision No.179 of 2015

Saeed Ullah and another.

Versus

EWIC East West, Indenting Corporation through Chief Executive, Islamabad.

Petitioner's by : Abid Mehmood, Advocate.

Respondent's by : Ex-parte.

Date of Decision : 16.01.2020

AAMER FAROOQ, J. - Through the instant petition, the petitioners have assailed order dated 19.03.2015, whereby the application for restoration filed by the respondent was restored, which had been dismissed on the same date.

2. The facts, in brief, are that the respondent filed an application for restoration of the suit, which was dismissed earlier. The referred application was dismissed for non-prosecution on 19.03.2015, while the petitioners were present. On the same date, an application for restoration was moved, which was accepted.

3. Learned counsel for the petitioners, *inter-alia*, contended that notice ought to have been issued to the

petitioners, which was not done. It was contended that since the petitioners had been present, hence issuance of notice was mandatory under Order IX Rule 9 C.P.C.

4. Notices were issued to the respondent and even newspaper proclamation was made to effect the service, however, he was ordered to be proceeded ex-parte on 09.11.2017.

5. It is an admitted position that on 19.03.2015, the application for restoration of the suit filed by the respondent was dismissed for non-prosecution, however, the application was made which was allowed on the same date, which was made subsequently but inadvertently order has been mentioned as of 19.03.2015. Under Order IX Rule 9(2) C.P.C., no order is to be made for restoration of the suit without notice to the opposite party. No such notice was made by the learned Trial Court while restoring the suit, hence the jurisdiction has been exercised with material irregularity.

6. In view of the above, the instant petition is **allowed** and order dated 11.04.2015 (typed as 19.03.2015) is **set-aside**; consequently, the application for restoration shall be deemed to be pending and decided in accordance with law.


(AAMER FAROOQ)
JUDGE