

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.178/2019
Nayatel (Pvt.) Limited
Versus
Mubashir Jalil

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	13.05.2019	Mr. Babar Mumtaz, Advocate for the petitioner

Through the instant civil revision petition, the petitioner, Nayatel (Pvt.) Ltd., impugns the order dated 09.03.2019, passed by the Court of the learned District Judge, Islamabad, dismissing the petitioner's application for the restoration of its appeal which was dismissed for non-prosecution on 30.10.2018.

2. On 11.09.2015, the petitioner had filed a suit for recovery of Rs.2,23,659/- against the respondent before the Court of the learned Civil Judge, Islamabad. Vide order dated 06.02.2018, the said suit was dismissed by the learned Civil Court under Order XVII, Rule 3, C.P.C. The petitioner had assailed the said order dated 06.02.2018 in an appeal, which was allowed by the Court of the learned Additional District and Sessions Judge, Islamabad, vide order dated 10.04.2018 subject to the payment of costs to the tune of Rs.10,000/-. The matter was remanded with the direction to the parties to appear before the learned Civil Court on 20.04.2018.

3. On 20.04.2018, the learned Civil Court presided over by Mrs. Sanam Bukhari referred the case to the learned District Judge, Islamabad, so that it could be heard by some other Court. Furthermore, the parties were directed to appear before the learned District Judge, Islamabad, on

23.04.2018. The case was entrusted to the Court of Raja Farrukh Ali Khan, Civil Judge, Islamabad. The matter was taken-up by the learned Civil Court on the same very day i.e., 23.04.2018, whereon the petitioner's right to produce evidence was closed under Order XVII, Rule 3, C.P.C. The petitioner preferred an appeal against the said order dated 23.04.2018, which was dismissed for non-prosecution on 30.10.2018. The petitioner's application for the restoration of its appeal was dismissed, vide the impugned order dated 09.03.2019, passed by the learned District Judge, Islamabad. The said order dated 09.03.2019 has been assailed by the petitioner in the instant civil revision petition.

4. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant revision petition, submitted that after the passing of the remand order dated 10.04.2018 by the learned Appellate Court, the parties had appeared before the learned Civil Court on 20.04.2018, and the learned Civil Court had fixed 24.04.2018 and not 23.04.2018 as the next date; that the learned Civil Court had closed the petitioner's right to produce evidence on 23.04.2018 in the petitioner's absence; that during the pendency of the appeal, the petitioner had made an effort to pay the fine to the respondent; that the learned Appellate Court, vide order dated 30.10.2018, dismissed the petitioner's appeal for non-prosecution, when the learned counsel for the petitioner had gone to pick up his children from school and drop them at home; that when the learned counsel for the petitioner returned, the petitioner's appeal had already been dismissed for

non-prosecution; that the learned counsel for the respondent took undue advantage of the absence of the learned counsel for the petitioner from the learned Appellate Court for a short period; and that law prefers adjudication on merits rather than technicalities. Learned counsel for the petitioner prayed for the revision petition to be allowed.

5. . I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

6. The facts leading to the filing of the instant revision petition have been set out in sufficient detail in paragraphs 2 to 3 above, and need not be recapitulated.

7. As mentioned above, the petitioner's appeal against the order dated 06.02.2018, passed by the learned Civil Court was allowed by the learned Appellate Court, vide order dated 10.04.2018 subject to the payment of costs to the tune of Rs.10,000/-. It is an admitted position that on 20.04.2018 (i.e., the date fixed by the learned Appellate Court for the appearance of the parties before the learned Civil Court), the petitioner did not pay the said amount to the respondent.

8. Even if it is assumed that there was a confusion as to whether the next date had been fixed by the learned Civil Court as 23.04.2018 or 24.04.2018, yet the fact remains that the petitioner had filed an appeal against the order dated 23.04.2018 passed by the learned Civil Court before the learned Appellate Court and the order sheet of the learned Appellate Court (annexed with this petition) shows that no effort had been made by the petitioner to pay Rs.10,000/- to the respondent. On 30.10.2018, the matter was taken-

up for hearing by the learned Appellate Court at 10:00 a.m. and the attendance of the learned counsel for the petitioner has been recorded. The learned counsel for the petitioner was directed to pay Rs.10,000/- and for this purpose, the appeal was to be taken-up for hearing later. The appeal was taken-up for hearing at 12:45 pm. Since the said amount had not been deposited, the learned Appellate Court was justified in dismissing the petitioner's appeal. Even if the learned counsel for the petitioner had to take his children from school and drop them at home, the representative of the party i.e., the appellant, should have appeared and deposited the said amount. Learned counsel for the petitioner while making submissions did not even state that the petitioner was ready, willing and able to deposit the said amount.

9. In view of the above, the instant revision petition is dismissed in *limine*.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*