

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Yahya Afridi, CJ
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Miangul Hassan Aurangzeb

Civil Petition No. 3875 of 2024
*(Against the order dated 20.06.2024 of the
Peshawar High Court, Mingora Bench (Dar-ul-Qaza),
Swat passed in C.R No.266-M/2024)*

<i>Khurshed Ali Khan.</i>	...	<i>Petitioner</i>
<u>Versus</u>		
<i>Muhammad Ayub and others.</i>	...	<i>Respondents</i>

For the Petitioner:	Mr. Asghar Ali, ASC. Syed Rifaqat Hussain Shah, AOR.
For Respondents:	Not represented.
Date of Hearing:	08.05.2025.

ORDER

Muhammad Shafi Siddiqui, J. Petitioner filed suit being No.97/1 on 30.07.2019 wherein issues were framed on 10.01.2020 and 11.09.2021. Impugned order disclosed that on 27.02.2023 when the matter was fixed for evidence it was adjourned to 29.03.2023 on account of absence of defendants/respondents.

2. On 29.03.2023 though defendants No.1 to 7 were present before Trial Court but no one for petitioner/plaintiff, which resulted in the dismissal of suit for non-prosecution.
3. Belatedly, a restoration application was filed on 23.05.2023 on the alleged illness of father of plaintiff, though counsel had marked his presence in the morning but did not appear later on the day of dismissal of suit. Grounds disclosed in the application were not found sufficient and consequently dismissed both the applications for condonation as well as

restoration on 19.12.2023. Appeal preferred but met the same fate before District Judge, Swat *vide* order dated 17.01.2024.

4. The time barred application did not provide any satisfactory reasons. Before us learned counsel took a fresh ground that suit in presence of other applications, which were pending should not have been dismissed.

5. We are afraid the argument of the learned counsel is not convincing. In the suit the issues were framed and the moment issues are framed in a suit, it (suit) become ripe for hearing. Notwithstanding the listed applications on the fateful day, the suit has also listed for hearing as the issues have been framed and case was adjourned for evidence of petitioner/plaintiff. This argument therefore is not convincing that suit was not ripe for hearing or that it should not have been dismissed for non-prosecution and/or at the most the application fixed could have been dismissed. It is well within the discretion of court to dismiss the suit if it is ripe for hearing i.e. after settlement of issues. There is however a distinction between date of hearing of suit and date of appearance of parties before settlement of issues¹. Later cannot be at par with date of hearing which is not the case here.

6. In view of the foregoing, we are not inclined to interfere with the impugned order. Therefore, leave to appeal is declined and consequently this petition is dismissed.

Chief Justice

Judge

Judge

Islamabad:
08.05.2025
[Asif Bhatti]

Approved for Reporting

¹ Abdul Latif v. Aqeel Ahmed (2006 SCMR 789).