IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No. 3597-L of 2023 &
Civil Petition No.8-L of 2024
On appeal from the Order dated 13.10.2023 & 30.11.2023 passed by the Lahore High Court, Lahore in Civil Revision No. 67274/2023 & R.A.No.78636/2023

Mrs. Faryal Arif Latif (In both cases)
...Petitioner(s)

Versus

Mr. Arif Latif. (In both cases)
...Respondent(s)

For the Petitioner(s) : Mr. Asad Javed, ASC

For the Respondent(s) : Mr. Muhammad Aurangzeb Khan Daha, ASC

Date of Hearing : 31.10.2024

Judgment

Muhammad Ali Mazhar, J. These two Civil Petitions for leave to appeal are directed against the Order dated 13.10.2023 and the Order dated 30.11.2023, passed by the Lahore High Court, in Civil Revision No. 67274/2023 and Review Application No.78636 of 2023.

2. The ephemeral facts of the case are that the respondent/plaintiff filed a civil suit for declaration and possession against the petitioner with the plea that he is the actual owner of the Bungalow No.62-2, ad-measuring 02 Kanals, DHA, Lahore, whereas the petitioner/defendant is only an ostensible owner (*benamidar*). On 12.12.2015, the learned Trial Court settled the issues and posted the matter for recording evidence. After availing various opportunities, the respondent appeared for recording his evidence on 14.09.2019. It was further alleged that earlier also, due to non-adducing the evidence, the suit was dismissed for non-prosecution but it was restored by the Trial Court and despite availing at least

eleven opportunities, including the last and final opportunity with warning to proceed, the respondent failed to produce his remaining evidence. Hence, on 19.04.2023, the learned Trial Court dismissed the suit for non-prosecution under Order IX, Rule 8 of the Code of Civil Procedure, 1908 ("CPC"). However, on 29.04.2023, the respondent filed an application for restoration of the suit and showed false and concocted grounds for non-appearance on the date when the matter was lastly fixed and without properly adverting to the grounds raised in the application, the Trial Court *vide* Order dated 19.09.2023, restored the suit. The petitioner challenged the Order before the learned High Court by means of Civil Revision which was dismissed on 13.10.2023. Thereafter, the petitioner also filed a review application for reviewing the Order dated 13.10.2023, but the review application was also dismissed on 30.11.2023. The petitioner, by dint of the aforesaid Civil Petitions, has assailed the judgment passed in the Revision Application and the order passed in the Review Application, separately.

3. The learned counsel for the petitioner argued that the High Court has erroneously dismissed the revision petition *in limine* without considering the record of the case. The findings that the civil suit was transferred under an administrative order and that the parties were not informed of the date to appear before the transferee Court were not based on the correct legal and factual position of the case. He further argued that the learned High Court wrongly relied Chapter XIII, Volume 1 of the Rules and Orders of the Lahore High Court, Lahore ("Rules and Orders), which was not applicable, as at the time of the administrative transfer, the parties were duly informed of the next date of appearance. It was further contended that despite availing various chances and opportunities, the respondent failed to lead and complete the evidence. He further argued that merely filing a restoration application within the time limit is not enough to make out a case for restoration of the suit; showing sufficient cause is *sine quo non* for the restoration of a suit dismissed for non-prosecution. He relied on the judgments rendered by this Court in the cases of Rai Muhammad through legal heirs v. Ejaz Ahmed **(PLD 2021 SC 761)**, Kh.Muhammad

Fazil v. Mumtaz Munawar Khan **(2023 SCP 368)**, SKB-KNK Joint Venture Contractor v. Water and Power Development Authority **(2022 SCMR 1615)** and Zulifqar Ali v. Lal Din **(1974 SCMR 162)**.

4. The learned counsel further argued that the suit was dismissed for non-prosecution due to the reckless conduct of the respondent, who deliberately failed to lead evidence on the date of hearing. However, without showing any sufficient cause, the Trial Court restored the suit in a slipshod manner without considering that the respondent failed to meet the mandatory tests of truthfulness and credibility. He further argued that the unavailability of the record could not be treated as a valid cause to prevent the respondent from producing the remaining oral and documentary evidence. It was further averred that both Courts failed to appreciate whether sufficient cause for non-appearance was made out or not, especially keeping in mind the track record of the respondent.

5. The learned counsel for the respondent argued that on the date when the suit was dismissed for non-prosecution, the attendance was marked. Since the record was not received from the Court from which the matter was transferred, the matter could not proceed. The Court staff informed the counsel that the matter would be adjourned to another date due to the absence of the record. However, when the counsel attended the Court to note the new date, he found out that the suit had been dismissed for non-prosecution. He further argued that the learned Trial Court, after considering the factual position and the sufficient cause made out for restoration, allowed the application, and the learned High Court rightly dismissed the revision petition and review application.

6. Heard the arguments. The restoration application filed by the respondent depicts that on the day the suit was dismissed for non-prosecution, the counsel appeared before the Court to mark his presence. The suit was fixed only for documentary evidence. The suit had been transferred by an administrative order of the District Judge, along with the records comprising approximately six files, but the record was not transferred to the transferee Court from the previous Court of Civil Judge when the suit was fixed for documentary evidence. The counsel was informed that the record

has not yet been received. Due to the consistent efforts of the plaintiff's counsel, the case record was received by the transferee Court on 13.04.2023. However, the Court staff informed that the records were disorganized and needed to be arranged before submission to the Court. They advised the counsel to take another date for the hearing, and the reader of the court kept the case aside for the other party. Later, it discovered that the suit had been dismissed due to non-prosecution. In the prayer clause, it was stated that the suit was at the stage of documentary evidence, and there was no fault on the part of the plaintiff's counsel.

7. Furthermore, the learned High Court, while dismissing the revision petition, held that the suit was dismissed under Rule 8 of Order IX, CPC, on 19.04.2023, while the respondent filed the application for restoration under Rule 9 of Order IX, CPC, on 29.04.2023, which was within the time prescribed under Article 163 of the Limitation Act, 1908, which allows thirty days for filing an application from the date of dismissal of the suit in default. It was further held that the case file was received in the Trial Court through transfer; therefore, it was incumbent upon the transferee Court to issue notice to the parties, because the case had been transferred by an administrative order and not under section 24-A (2), CPC. Furthermore, reliance was placed on Paragraph 6, Chapter XIII, Volume I of the Rules and Orders. The learned High Court did not find any illegality or irregularity in the order of the learned Trial Court and, as a result thereof, dismissed the revision petition *in limine*. As far as the review application is concerned, the learned High Court also dismissed it with the observation that no error was apparent on record in the order sought to be reviewed, which is prerequisite for reviewing the judgment or order.

8. The linchpin of the arguments presented by the learned counsel for the petitioner is that after the administrative transfer of the *lis*, the parties were already aware and appearing in the transferee Court. Furthermore, the respondent failed to plead any sufficient cause for absence on the date of hearing, and the restoration of the suit in its original form was unjustified. While attacking the impugned judgment and order of the High Court, the learned counsel also argued that despite various opportunities afforded to

the respondent, he deliberately failed to complete his evidence, and on the fateful day, due to non-appearance, the suit was rightly dismissed for non-prosecution. On the contrary, the preview and articulation of the order passed by the learned Civil Judge suggest that, while restoring the suit, the Court was aware that after recording the oral evidence of the plaintiff, the case was fixed for documentary evidence, which had been dismissed for non prosecution. However, the restoration application was filed within the prescribed limitation period, and since the partial evidence of the plaintiff had already been recorded, the learned Civil Judge, instead of nonsuiting the respondent/plaintiff, preferred to decide the *lis* on merits and restored it, subject to the payment of costs.

9. The learned Civil Judge neither negated nor disbelieved the whys and wherefores pleaded by the respondent in the restoration application for the non-appearance on the date fixed for documentary evidence. The Court staff had informed that the record was disorganized and needed to be arranged. Therefore, the counsel was advised that matter would not proceed. However, when the counsel came to collect the date, the suit had already been dismissed for non-prosecution. Had the assertions or reasons mentioned in the restoration application been found incorrect, the learned Civil Judge would not have restored the suit. Instead, he could have inquired with the Court staff to confirm whether the counsel marked his attendance in the morning and whether, due to the disorganized record, he had been called upon to take another date or not. Nothing appears to have been rebutted, and on the face of it, when the matter was fixed only for documentary evidence, then of course, the reasons assigned in the restoration application were rightly considered sufficient cause by the learned Civil Judge. Though the learned High Court observed that when the matter was transferred, notice was required from the transferee Court and also relied on Paragraph 6, Chapter XIII, Volume I of the Rules and Orders, but in our view, the said provision was inapplicable to the controversy pertaining to the instant case. The non-appearance was not due to the non-receipt of the court motion notice from the transferee court, but in fact, the parties were fully aware and had been appearing. While the sufficient cause for non-

appearance presented in the restoration application was different, the impugned judgment and order of the learned High Court also reflect that the order of the Civil Judge restoring the suit was properly considered and affirmed without interference. Consequently, we have also reconsidered and re-evaluated the order and reached the conclusion that the respondent in the restoration application made out the case by showing sufficient cause. Therefore, the learned Trial Court passed the order in accordance with law.

10. It is well renowned that the CPC is a consolidatory law which is primarily procedural in nature and can be defined as a branch of law administering and directing the process of civil litigation. The rules framed under the CPC are for advancing the dispensation of justice, rather than supplementing or complementing it to defeat the ends of justice. It would be somewhat apt to refer the case of Narsingh Das v. Mangal Dubey **[(1883) ILR 5All 163],** which reiterates that even in ancient times, the Courts emphasized that they are not to act upon the principle that every procedure is to be taken as prohibited unless expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible until it is shown to be prohibited by law.

11. According to the niceties of Order IX, Rule 8, CPC, where the defendant appears but the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where only part of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder. Whereas, Rule 9 of the same Order, *inter alia*, accentuates that where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action, but he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks

fit and shall appoint a day for proceeding with the suit. The learned counsel for the petitioner vigorously argued that the suit had been dismissed previously too, and despite being granted several opportunities, the respondent/plaintiff failed to lead and complete the evidence. Therefore, it could be considered another ground for dismissing the restoration application. In our view, the suit was dismissed for non-prosecution on the day when it was fixed for documentary evidence. Therefore, for its restoration, sufficient cause for non-appearance was to be shown for that particular day of non-appearance, which is material for the purpose of allowing the restoration application and this has nothing to do with past failures. Rule 8 and 9 of Order IX, CPC, do not impose any obligation on the Court to first consider the past record before restoring the suit to its original position. Instead, the Court is only required to determine whether sufficient cause for non-appearance is made out for the day when the suit was dismissed for non-prosecution. Past conduct may be ruminated to assess the seriousness or non-seriousness of a party in the litigation, and due to any past reckless conduct, the Court may impose costs on any default with a warning. However, past conduct alone cannot be considered a ground for dismissing the restoration application if sufficient cause for non-appearance on the date of hearing is otherwise made out.

12. The learned counsel for the petitioner relied on the case of Zulfiqar Ali (*supra*) in which the plea for non-appearance was taken due to negligence of the counsel. The Court held that mere engagement of counsel does not absolve the litigant of all his responsibilities. While in the case of Rai Muhammad (*supra*), the court observed that on various dates, no one appeared for the petitioners, and on five occasions, only the court clerk of the learned counsel appeared, which also constitutes non-appearance. The Court further deprecated multiple last and final opportunities, which were granted to file replies to the applications and other pleadings from time to time. Whereas, in the case of SKB-KNK Joint Venture Contractor (*supra*), the Court held that the government departments are also treated like any other ordinary party before the Court and are to be given the same treatment. No

sufficient cause was shown in that case for non-appearance, so the Court observed that limitation cannot be considered a mere technicality, and after expiry of the period of limitation, valuable rights accrue to the party. As for the case of Kh. Muhammad Fazil (*supra*), it only dealt with the enlargement of time by the Court under Section 148, CPC. All the aforementioned judicial precedents have been considered by us but are found distinguishable from the set of circumstances of the instant case, where neither any issue of limitation is involved nor is it the case that only the court clerk appeared. The matter here is confined to the non-appearance only on the day the suit was dismissed for non-prosecution, and the learned counsel has shown sufficient cause for restoration.

13. The function of the court is to administer substantial justice between the parties after providing ample opportunity for hearing which is a significant component and virtue of a fair trial, whereas the procedure serves as a machinery with the object of facilitating and not obstructing the administration of justice. Therefore, it ought to be construed liberally and, as far as possible, technical objections should not be allowed to defeat substantial justice. This Court, in the case of Imtiaz Ahmad v. Ghulam Ali **(PLD 1963 S.C.382)**, held that the proper place of procedure in any system of administration of justice is to help and not to thwart the grant of rights to people. All technicalities have to be avoided unless it is essential to comply with them on grounds of public policy. The English system of administration of justice, on which our own is based, may be, to a certain extent, technical. However, we are not to take from that system its defects. Any system which, by giving effect to the form and not to the substance, defeats substantive rights, is defective to that extent. The ideal must always be a system that gives to every person what is his. According to *Corpus Juris Secundum*, Volume 21 (page 136): “While a Court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and subject to existing laws and constitutional provisions, every regularly constituted Court has power to do all things that are reasonably necessary for the

administration of justice within the scope of jurisdiction and for the enforcement of its judgments and mandates."

14. Another undeniable reality is that the number of cases in the court docket is increasing exponentially due to the surge in litigation across diverse fields. By and large, the criticism and condemnation by the public at large for delays in the disposal of cases, particularly civil suits, is directed solely at the Courts, without acknowledging that the parties and their advocates are also equally responsible and accountable for such delays. The frequent filing of adjournment applications is, in fact, a major cause of delay. As in this case, the counsel for the petitioner avowed that numerous opportunities were afforded to the respondent/plaintiff but the evidence remained incomplete due to disorganized records. There are several crucial aspects which need to be doctored for convalescing and recuperating the public confidence. Every judge is a master of his own docket, and sanguine to the huge backlog in almost every court of this country, it is high time for courts to maintain proper in-built Case Management Systems across the board, even at the grassroots level.

15. The indispensable mission of a judge is to administer justice and settle disputes between the parties impartially and in accordance with the law of land. According to Ulpian, the Roman jurist, "Justice is the constant and perpetual will to allot to every man his due." Almost every Court is now equipped with an automation system, which can be used to develop proper strategy for grading cases and establishing foreseeable timelines for their disposal. Predominantly, the cause of concern in the masses is unmerited delay in the disposal of civil suits and other species of disputes in civil nature. If a proper Case Management System is developed and each court self-organizes its own docket rationally and classifies timelines for each stage in the proceedings step-by-step and strictly adheres to it, with the parties and their advocates also adhering to it, then the likelihood or probability of inordinate delays or impediments in the disposal of cases will be much lessened and moderated.

16. The annotations in *Judicial Reflections of Justice Bhagwati* (2008 Edition) accentuate that the judiciary has to devise new methods, forge new tools and innovate new strategies for the purpose of bringing social justice to the common man. It must abjure reactive approach and adopt a proactive role. It must respond to the demands and urges of the large masses of people for social justice, and by adopting a creative and activist approach, it must mould and develop the law and bring it closer to the people so that the rule of law becomes meaningful, and social justice a reality for them. Today, a vast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice for large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning.

17. The maxim "justice delayed is justice denied" suggests that access to well-timed justice is an inherent right of people but it is often seen the people receive justice only after a long delay, not only in civil litigation but in also criminal cases. Due to improper case management by the courts and delays caused by procrastination, delayed justice makes the cause redundant or ineffectual for them. This also underscores the eminence of timely and efficacious dispensation of justice, because if the judicial system fails to impart justice timely, it creates exasperation and disgruntlement in the public at large which also results in a loss of faith in the entire judicial system of the country and widespread criticism that court cases linger on for years and decades. Even in criminal cases, the accused and the victims of crimes have to wait several years to get justice, which causes serious sufferings and distress. In fact, it is not uncommon that that when appeals are fixed for hearing after long delays, the accused has either died during incarceration, desperately awaiting the turn of his case, or the convict has already completed his sentence and is released from jail.

18. As said by Martin Luther King, delayed justice is equal to injustice. Conversely, another maxim states that "justice hurried

is justice buried," which serves as a caveat against hurried judgments for the sake of expediency. This axiom also suggests that justice is compromised when legal proceedings are rushed and concluded without following the norms of justice, or affording the right to a fair trial or due process of law. Therefore, in all fairness, a proper distinction and balance must be maintained for the effective administration of justice. While the time period for filing a written statement, filing a list of witnesses, fixing a matter for arguments after the close of evidence, and announcing judgment by the Civil Court is provided in various provisions of the Civil Procedure Code (C.P.C.), unfortunately, such time limits are not consistently adhered to, and delays in the disposal of lawsuits persist in almost every court.

19. If the pending civil suit in the instant case is treated as a paradigm to mathematically calculate the timespan of litigation, it reveals that the Civil Suit was filed by the respondent on 24.05.2013, in the Civil Court at Lahore. The petitioner filed the written statement on 14.03.2014, and the Court settled the issues on 12.12.2015 and fixed the matter for evidence, which means that at least two and half years were consumed to complete the prerequisites before commencing the formal trial of the suit which has regrettably been pending for last than eleven years. Even if it is now decided expeditiously, only God knows how many years more will be consumed in appeal, revision, and finally, in bringing the case to this Court, if an appeal is preferred against the lower fora. Yet again, sanguine to the alarming situation, we recapitulate that if such delays continue to happen, the situation will become more deprecate and, in an unruly manner, echo the axiom: justice delayed is justice denied.

20. According to Article 202 of the Constitution of the Islamic Republic of Pakistan 1973, subject to the Constitution and law, the High Court may make rules regulating the practice and procedure of the Court or of any court subordinate to it, while under Article 203, each High Court has been conferred and vested with the powers to supervise and control all courts subordinate to it. In our view, it is the need of the hour, rather a pressing priority, to

incorporate a proper stage-wise Case Management System in the CPC, from the date of admission of suit till its culmination with dedicated timelines for stage-by-stage proceedings to be complied with, by the Courts and parties both. In exercise of the powers conferred under Article 202 and 203 of the Constitution, the High Courts can also frame and amend the rules to make the system more effective and meaningful for its subordinate judiciary. If truth be told, a certain timeline is also required to be integrated in the Code of Criminal Procedure Code, 1898 (Cr.P.C) where much of the delay is only caused due to the non-submission of the reports under Section 173, Cr.P.C, and even if a report is filed by the Investigating Officer, then much time is consumed by the Courts for framing of charge for the reason that it is not properly regulated or controlled with any dedicated timeline of completing the tasks of framing of charge, completion of evidence, and recording statements of the accused under Section 342, Cr.P.C.

21. Mere criticism for the sake of criticism, either for exploitation or seeking mileage, does not resolve the glitches from any system unless some concrete and sincere efforts are made for improvisation, with inventiveness, to eliminate the deficiencies which, most of the time, become instrumental in the delay of disposal. Thus, mindful to the method of first in, first out, a new/separate chapter ought to be incorporated in the CPC under the nomenclature of “Case Management” with stage-wise, dedicated timelines of each step of proceedings, including provision for case-aging and time-limits for disposal of interlocutory applications from the original to the appellate stage, and it should be implemented across the board with penal consequences of non-compliance, which may include but not be limited to imposing compensatory/exemplary costs. Moreover, a separate Chapter with the same nomenclature ought to be incorporated in the Cr.P.C too, with dedicated stage-wise timelines for proceedings and deciding of cases by the Court from the trial to the appellate stage. If such aforesaid proposed Chapters are made part of the statues, it will really not only become a *laissez-faire* for fast-moving disposal of cases in accordance with law, but it will also make it easier for the High Courts to ensure compliance with certain norms of accountability (both in civil and criminal cases) under their

jurisdiction of superintendence, while vetting monthly or quarterly disposal reports submitted to them by the subordinate judiciary. The proposed amendments, if brought in, will also strengthen the confidence of the public on the judiciary and prove to be a milestone, if implemented staunchly and unwaveringly, surely with positive results in the early disposal and cleaning of the backlog of both civil and criminal cases by the Courts with the help of the fraternity of lawyers/litigants. Along these lines, we keenly invite the attention of the Federal and Provincial legislatures and leave it to their fine sense of judgment and wisdom to consider the matter at hand, which has great significance and a direct impact on the expeditious and prompt flow of the administration of justice. Therefore, the office is directed to send a copy of this judgment to the learned Attorney General of Pakistan, the learned Advocate Generals of all provinces, including the Federal Capital Territory, Islamabad, and the Secretary of the Law & Justice Commission of Pakistan, to bring this matter to the attention of those in the corridors of power in the larger public interest.

22. Insofar as the matter at hand is concerned, we do not find any illegality or perversity in the impugned orders passed by the learned High Court affirming the restoration of the lawsuit. The civil petitions are dismissed, and leave is refused. Nevertheless, the learned trial court is directed to expedite the matter and decide the long-pending civil suit on merits within a period of six months by all means.

Judge

Judge

Islamabad
31.10.2024
Khalid
Approved for reporting