

IN THE HIGH COURT OF SINDH AT KARACHI

IIInd Appeal No. 250 of 2024

M/s. Be Energy Limited Vs. Khalid Malik Chawla

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| Date | Order with Signature of Judge |
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Hearing/Priority.

1. For hearing of MA No. 7483/24.
2. For hearing main case.

07.08.2026

Mr. Muneeb-ud-din Qidwai, Advocate for the Appellant.

**Saman Rafat Imtiaz J:** Through this Second Appeal, the Appellant has challenged the impugned Judgment and Decree dated 21.12.2023 ("**Impugned Judgment and Decree No. 1**") whereby the 1st Senior Civil Judge, Karachi East partly dismissed the Civil Suit No.577/2014 filed by the Appellant as well as the impugned Judgment dated 18.07.2024 ("**Impugned Judgment and Decree No. 2**") passed in Civil Appeal No. 158/2024, whereby, the IVth Additional District & Sessions Judge, Karachi (East) dismissed the Appellant's appeal and upheld the impugned Judgment ad Decree No. 1.

2. Briefly stated, the facts as per the memo of Appeal, are that the Appellant is an illustrious Oil Marketing Company (OMC) incorporated under the governing laws of Pakistan who contributes heavily to the national exchequer from its operations within Pakistan. The Appellant Company is engaged in the business of marketing & distribution of different petroleum products throughout the country under the name & style of M/s. Be Energy Limited (formerly known as Bakri Trading Company Pakistan (Pvt.) Limited and Overseas Oil Trading Company Limited, which were merged together vide Order dated 11-05-2016 passed by this Court) through its retail network. The Respondent No. 1 is the owner of Office No. 401, admeasuring a total of 5000 square feet situated on the 4th floor, in the project known as "Orient House" constructed on Plot No. 194-A, Sindhi Muslim Cooperative Housing Society, Karachi. The subject premises was given on rent to the Appellant in 2007 for an initial period of three (3) years. Subsequently, on 21.09.2007, the Appellant and Respondent No. 1 entered into a tenancy agreement which expired on 09.09.2010. Pursuant to clause 21 of the agreement, the Appellant entered into a renewal tenancy agreement on

12.10.2010 with Respondent No. 1. However, after one year, the Appellant, in accordance with clause 21.2, served a notice dated 19.01.2012 to terminate the tenancy agreement dated 12.10.2010. The Appellant served a legal notice dated 16.04.2014 to Respondent No. 1, demanding payment of the outstanding sum of Rs. 26,75,197/- which had been unlawfully retained as advance rent and security deposit. The notice also requested the return of the inventory articles, prepared in the presence of both parties, which are still in the possession of Respondent No. 1. Alternatively, the Appellant demanded payment of Rs. 11,841,375/- for the cost of the articles, along with Rs. 204,319/- for income tax paid on behalf of Respondent No. 1 and Rs. 26,75,197/- for the advance rent/security deposit, totalling Rs. 14,720,891/-. Respondent No. 1 failed to comply with these demands, and the Appellant had serious concerns that Respondent No. 1 might dispose of or embezzle the articles remaining in the subject premises. Therefore, the Appellant filed a Civil Suit No. 577/2014 with a prayer for Recovery of Amount of Rs. 14,720,891/- and Permanent Injunction against the Respondent No. 1, including articles of the Appellant lying with the Respondent No. 1 in the subject premises and for Recovery of advance withholding tax deducted by the Respondent No. 1 along with illegally retaining three months advance rent already paid by the Appellant to the Respondent No. 1, which was partly decreed and partly dismissed vide Judgment and Decree dated 21.12.2023 by observing that Appellant is only entitled to receive the articles mentioned in Annexure G-1 annexed with the plaint. Thereafter, the Appellant filed Civil Appeal No. 158/2024 against the Judgment and Decree dated 21.12.2023 before the District & Sessions Judge Karachi East which was transferred to IVth Additional District Judge, Karachi East. The Appeal was dismissed as time barred vide the Impugned Order No. 2.

3. The learned counsel for the Appellant submitted that the learned First Appellate Court erred in passing the impugned order and failed to condone the delay in filing of appeal as the learned Appellate Court failed to take into consideration that the delay, if any, was caused because the Appellant had engaged Mr. Muhammad Shahid Qadeer Advocate as their counsel to appear before the learned Trial Court in Suit No. 577/2014, which is evident from the copy of Vakalatnama dated 28.04.2014 available on record, but that on his demise one Mr. Abdul Ghaffar, Advocate started appearing on behalf of the Appellant before the Trial Court without informing the Appellant, and therefore, the Appellant was unaware of the

Judgment and Decree passed by the Trial Court partly in favour of Respondent and as such was precluded from filing the appeal within the limitation period. The learned counsel contended in such circumstances the delay should be condoned.

4. Heard the learned counsel for the parties and perused the record.

5. The perusal of the impugned judgment shows that the learned Appellate Court observed that the Appellant has neither mentioned the date of demise of their previous counsel nor even produced copy of his death certificate. So much so, he did not bring on record anything which could suggest that the late advocate M. Shahid Qadeer was his advocate.

6. The learned counsel for the Appellant sought time to produce the death certificate. However, perusal of the file reveals that copy of the Death Certificate is already on the file which reflects that the late Muhammad Shahid Qadeer, Advocate died on 06.10.2021 whereas the Impugned Judgment and Decree No. 1 was passed in the year 2023. It is not plausible that Mr. Abdul Ghaffar Advocate, who kept appearing on behalf of the Appellant after the death of Late Muhammad Shahid Qadeer was not engaged by the Appellant. There is nothing on the record to show that he was not part of the Firm of Late Muhammad Shahid Qadeer.

9. Even otherwise if it were to be believed that the counsel purportedly appearing on behalf of the Appellant was not authorized, there is no explanation as to why the Appellant did not follow up the matter which could enable them to discover that their appointed counsel had died. It is well settled law that the party itself is bound to pursue the Court proceedings and neglect or nonappearance of counsel does not *ipso facto* absolve a party from pursuing the matter, as such delay in filing necessary applications/appeals cannot be condoned on this ground as negligence of the counsel is not sufficient cause for delay<sup>1</sup>.

10. In view of the foregoing, it appears that the learned IVth Additional District and Sessions Judge, Karachi (East) has considered all relevant aspects in the Impugned Judgment No. 2 and has rendered a well-reasoned judgment on the point of limitation and no illegality and or infirmity has been pointed out by or on behalf of the Appellant to justify the setting aside of the impugned judgments and decrees as prayed for. In

<sup>1</sup> *Salman Capital Investments (Pvt.) Ltd. Vs. MCB Bank Limited, 2025 CLD 641; The Bank of Punjab Vs M/s Super Trunk House through Proprietor and Another, PLD 2022 Lahore 564*

view of the foregoing, the instant appeal is dismissed alongwith listed application in *limine*.



JUDGE

Ayaz