

## IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Syed Hassan Azhar Rizvi, J  
Mr. Zulfiqar Ahmad Khan, J

### HCA No.53 of 2017

[Mrs. Nasreen Jahan Siddiqui v. Mrs. Amber and others]

Appellant : Mrs. Nasreen Jahan Siddiqui, through  
Mr. Ashraf Ali Butt, Advocate

Respondent No.1 : Through M/s. Syed Haider Imam Rizvi  
and Ahsan Imam Rizvi alongwith  
Mr. Abdul Rauf Malik, Advocates

Date of Hearing : 15.02.2018

Date of Announcement : 23.02.2018

### JUDGMENT

**Zulfiqar Ahmad Khan, J:-** The instant appeal has been filed against order dated 10.11.2016 passed by learned Single Judge of this Court in Execution No. 01 of 2015 arising out of judgment and decree dated 01.04.2014. A review of the order shows that it was made in desperate circumstances where a dispute with regards the transfer of suit property between the parties was long pending. As affirmed by the counsel for the Decree Holder, the Judgment Debtor had left no stone unturned to deter execution of the decree passed in a suit for specific performance. In the said order, Nazir was appointed as Commissioner to get the sale deed executed in favour of the Decree Holder in terms of the decree and submit his report within two months. The instant appeal was filed on 10.12.2016. In response to office objection, learned counsel for the Appellant filed CMA No.246 of 2017 on 14.01.2017 being application made under Section

5 of the Limitation Act, 1908 seeking condonation of delay in filing of this appeal from 02.12.2016 to 09.12.2016 on the ground that the Appellant was not available to reach the Verification Branch during this period. Alongwith the said application, a handwritten note on a chit from Shazia Medical Centre & Maternity Home is attached, where it has been stated that the Appellant has had severe Gastroenteritis due to which she was recommended bed rest for 10 days.

2. Learned counsel for the Decree Holder filed counter affidavit to the said application and tried to blast the case of the Appellant on this ground of limitation, notwithstanding he also touched merit of the case. In all proprietary being challenged on account of limitation, the case was heard at length on this ground.

3. Learned counsel for the Appellant by placing reliance on the medical chit submitted that the Appellant had severe Gastroenteritis, which kept her on bed for 10 days thus she could not appear before the Verification Branch of this Court, thus the appeal is barred by for 08 days. He proposed that the doctor who has issued the said handwritten chit should be called in the witness box to confirm contents of the chit given by her.

4. Learned counsel for Respondent No.1 by placing reliance on a number of judgments, in particular, PLD 2008 SC 462 [Imtiaz Ali v. Atta Muhammad and another], 2009 SCMR 1435 [Abdul Rashid v. Director-General, Post Offices, Islamabad and others] and 2014 PLD Sindh 624 [Market Committee through Administrator/Secretary v. Haji Abdul Karim and 3 others], contended that the ill-fated suit filed by the Decree Holder in the year 2014 for the specific performance of a contract entered into

between the Decree Holder and the Judgment debtors where Judgment debtors (defendants) agreed to sell the Plaintiff property bearing No.SU-8, Askari IV, situated at Rashid Minhas Road, Gulistan-e-Johar, Karachi measuring 500 square yards through a compromise recorded by learned Single Judge of this Court by order dated 01.04.2014 was decided as per a scheme agreed between the parties. The Respondent No.1, who had already paid a sum of Rs.4,361,000/- from the total sale consideration had also deposited money with the Nazir as per the compromise and the Nazir was to proceed with registration of sale deed and effect delivery of physical and vacant possession of the property to the Respondent No.1, her nominee or any third party, which act has not been done for one reason or the other attributable to the Judgment Debtor (Appellant). Learned counsel for Respondent No.1 submitted that despite repeated attempts, the property was not transferred, which resulted in filing of the Execution Application, where the impugned order was passed after the lapse of nearly two years from the date of decree calling upon the Nazir to get the sale deed executed in favour of Decree Holder within two months. It was next submitted that while no appeal was preferred against the judgment and decree and that the Judgment Debtor is delaying execution of the sale deed in favour of the decree for all imaginable reasons. Judgment Debtor being a senior citizen causes continuous exposure to the Decree Holder's interests. It was next contended that the medical certificate is neither proper nor appropriate and alarmingly the doctor who has recommended 10 days bed rest to the Judgment Debtor, has not prescribed any medicines or test for the treatment of the ailment, making the entire scheme look dubious and devoid of any bonafide and failing to inspire confidence.

5. Heard the counsel for the parties, reviewed the material on record.
6. It is undoubtedly admitted by the counsel for the Appellant that the instant appeal is barred by 08 days and the only defence taken for such a delay is a handwritten chit from a less familiar Medical Centre and Maternity Home, where by one stroke of pen the entire delay of 08 days has been attempted to be condoned by prescribing the Judgment debtor 10 days bed rest without even prescribing any medicines or tests to the patient. It is abundantly clear that the Hon'ble apex Court under these circumstances has laid down rules and has required that the reasons for each and every day's delay have to be proved, which has not been done in this case. The case of Sheikh Muhammad Saleem v. Faiz Ahmed (2003 PLD 628 SC) sets principles with regard to condonation of delay, it has been held in the said case that *"person seeking condonation of delay must explain delay of each and every day to the satisfaction of the Court and should also establish that delay had been caused due to reasons beyond his control. Mere negligence and carelessness of the Appellant who failed to pursue his case with due diligence was not entitled to any indulgence. Door of justice was closed after the prescribed period of limitation has elapsed and no plea of injustice, hardship or ignorance could be of any avail unless the delay of each and every day was properly explained and accounted for"*. In the case of Abdul Majeed and others v. Hamida Bibi and 4 others (2002 SCMR 416) the apex Court in the given facts where the Appellate Court admitted appeal despite delay of 29 days without any reasonable or plausible explanation for the delay had taken cognizance of the matter, the apex Court held that there was no justification for the High Court to condone the delay in institution of the appeal.

7. Last but not least is to note that the chit produced in support of the condonation of delay even does not have any seal of the doctor and even the name and other vital signs of the patient have not been given, which fails to inspire confidence and appears to be a cooked up document. It is transparent to note that despite the compromise decree, Judgment Debtor has been showing reluctance in transferring the property in favour of the Decree Holder as per the scheme which she herself agreed as she was part of the compromise order dated 01.04.2014, which act is against the principle of equity and solely aimed to deprive the Decree Holder from her legal rights.

8. For the above reasons, we are of the view that no due diligence has been shown by the Appellant, nor any reasonable explanation has been given for the delay. The case being marred by the instances where it is clear that the Appellant is avoiding specific performance of the contract despite having received initial money and the rest having been deposited with the Nazir of this Court, the instant appeal which is seriously hit by limitation and failure of the Judgment debtor's counsel to convince this Court that the delay was on account of any bonafide reasons or that the Appellant had shown due diligence or had come with clean hands. The instant Appeal is accordingly dismissed alongwith all pending applications.

Judge

Judge