

IN THE HIGH COURT OF SINDH, KARACHI

C.P. NO. D- 1697 of 2009

PRESENT:
MR. JUSTICE SYED HASAN AZHAR RIZVI
MR. JUSTICE ARSHAD HUSSAIN KHAN

Mubarak Masih vs. Muhammad Yaqoob & others

Petitioner: Through Mr. Shamshad Ali Qureshi,
Advocate.

Respondent No.1: Through Mr. Sakhiullah Chandio,
Advocate

Date of hearing: 27.03.2018

JUDGMENT

ARSHAD HUSSAIN KHAN, J. The petitioner through instant petition challenging the judgment dated 06.08.2009 passed by learned VIIIth Additional District & Sessions Judge, Karachi (South), in Civil Appeal No.101 of 2008 whereby the civil appeal of the petitioner preferred against the judgment and decree dated 19.12.2006 passed in suit No.931 of 2001 was dismissed, has sought the following reliefs:

“It is therefore, prayed that this Hon’ble Court be pleased to order to take necessary action against the Advocate Rasheed Ahmed Shaikh and further submitted to the Bar Council for direction to take action against the said Advocate according to the law.

Finally it is prayed that this Hon’ble Court be pleased to order to condone the late filing of appeal in the Court as Rasheed Ahmed Shaikh has concealed the facts of the case from the appellant as the Respondent No.1 and Sheikh Rasheed Ahmed both are residing in the same mohallah and Advocate Rasheed Ahmed Shaikh has cooperated with the Respondent No.1 so that appellant could be ejected and dispossessed technically, hence this Hon’ble Court may be pleased to order to condone the delay in filing the appeal of the appellant in the interest of justice as the adjudication by the trial court is in process.”

2. Brief facts leading to the filing of present petition as mentioned therein are that a Civil Suit No.931/2001, for declaration, injunction possession and recovery of mesne profit was filed by respondent No.1(Muhammad Yaqoob) against the present petitioner and one Jawed Hashim. On 19.12.2006, the said suit after trail was decreed in favour of respondent No.1. The petitioner challenged the said judgment and decree before learned VIIIth Additional District and Sessions judge,

Karachi (South) in Civil Appeal No.101 of 2008 on 04.08.2008. The said appeal was subsequently dismissed by the learned ADJ on 6.08.2009 on the point of limitation. The said judgment is impugned by the petitioner in the instant Petition on the grounds that counsel namely Abdul Rasheed, engaged by the petitioner to file civil appeal against the judgment and decree passed in suit No. 931 of 2001 did not file appeal in time and he has also kept the present petitioner in dark about the same, however, as soon as the petitioner came to know about non-filing of the appeal, he engaged the services of another counsel and filed appeal bearing No.101 of 2008. However, the learned ADJ while dismissing the appeal, judgment whereof impugned in the present petition, did not consider the said fact while non-filing of the appeal in time was neither willful nor deliberate but it was on account of negligence and professional misconduct on the part of counsel namely; Abdul Rasheed, who had been engaged by the petitioner to file the civil appeal against the judgment and decree passed in suit No.931 of 2001.

3. Upon notice of the present petition, respondent No.1 filed para-wise comments to the memo of petition, wherein respondent No.1 taking preliminary legal objections to the maintainability of the petition has denied the facts narrated in the memo of petition. It has been stated that if the petitioner is aggrieved by the judgment of lower appellate court, he should have filed 2nd Appeal, the adequate remedy available under the law, and not the present constitutional petition. Further stated that respondent No.4 (Sindh Bar Council) has wrongly been impleaded in the petition as neither the Sindh Bar Council was party before the trial court nor before the lower appellate court nor any relief against any inaction on the part of respondent No.4 has been alleged in the present petition which could entitle the petitioner to invoke the jurisdiction of this Court under Article 199 of the Constitution. It is also averred that the petitioner filed Civil Appeal No.101/2008 on 07.08.2008 upon receiving notice of Execution Application No.15/2008 and he engaged the services of respondent No.3, the counsel who at one time was appearing for respondent No.1 before trial Court in Suit No.931/2001. It is also averred that respondent No.1 during pendency of Suit No.931/2001, disengaged the services of respondent No.3 on account of his illegal demand of more money. The said fact was within

the knowledge of petitioner and keeping in view the said fact he had engaged respondent No.3. and subsequently filed bogus complaint against respondent No.3 in order to create a ground of condonation of delay in filing appeal. The said complaint however was never pursued diligently by the petitioner, which fact is supported from the letter dated 11.09.2008, annexure-C to the petition, addressed by the respondent No.4 (Sindh Bar Counsel) to the petitioner for compliance of certain direction so that the complaint could be put up before the Disciplinary Committee. The fact regarding filing of complaint was never brought before the appellate court and in the present petition the petitioner first time disclosed about the same. Such conduct of the petitioner clearly established, malafide on the part of petitioner and hence the petitioner is not entitled to any relief claimed and the petition is liable to be dismissed with cost.

4. learned counsel for the petitioner during the course of his arguments has submitted that present petition is maintainable as the petitioner approached this court when both the courts below while passing the impugned judgments have failed to consider the fact that the petitioner has been deceived and cheated by the counsel he engaged before the trial court as well as before the lower appellate court and due to the said act the valuable right of the petitioner over the subject property extinguished and petitioner having no other alternate remedy filed the present petition. He further argued that judgment and decree passed in favour of respondent No.1 are void and this court under supervisory jurisdiction can entertain constitutional petition. It is also argued that no second appeal lies against the order passed in the first civil appeal as no decree could be drawn upon the order hence the petitioner rightly has filed the present constitutional petition. It is also argued that the counsel engaged by the petitioner did not properly place the case of the petitioner before the learned trial court and further various documents supporting the stance of the petitioner have not been produced resulting the trial court passed the judgment and decree against the petitioner. Furthermore, when counsel who had been initially engaged by the petitioner to file the appeal against the judgment and decree passed in suit No.1 931 of 2001, he deceived and cheated the petitioner and did not file the appeal in time however when

the petitioner came to know such fact the petitioner filed civil appeal along with application for limitation, however, the learned lower appellate court did not consider the grounds of delay in filing the appeal, mentioned in the application, and dismissed the appeal. Learned counsel also argued that the erstwhile counsel who had filed the present petition also did not place the complete facts and file relevant documents before this court at the time of filing of present petition. He further argued that after his services engaged by the petitioner he has filed various applications in the present case to bring on record the complete facts and documents. He also argued that the impugned judgment is not sustainable in law as the learned appellate court while dismissing the appeal of the petitioner has failed to consider the fact that non-filing of appeal in time was neither willful nor deliberate but it was on account of negligence and professional misconduct of counsel he engaged for filing the appeal, which was beyond the control of the petitioner. The learned lower appellate court dismissed the appeal merely on technical ground whereas the law favours adjudication on merits. It is also argued that litigant should not suffer on account of negligence of his counsel. Lastly argued that this court in its constitutional jurisdiction is vested with the power to undo any action and/or order, which is a result of an arbitrary exercise of authority, and/or passed without jurisdiction. The learned counsel in support of the stance in the case has relied upon the following case law:

2001 SCMR 827 MUHAMMAD SHAFI v. MUHAMMAD HUSSAIN, 2001 SCMR 279 Syed ALI ASGHAR and 3 others v. CREATORS (BUILDERS) and 3 others, 2008 SCMR 1384 Mst. RASHEEDA BIBI and others V. MUKHTAR AHMAD and others, 2010 SCMR 354 HASNAT AHMAD KHAN V. INSTITUTION OFFICER, 2001 SCMR 1641 DISTRICT COUNCIL, SIALKOT V. Chaudhry NAZIR AHMAD KHAN and 2 others, 1987 SCMR 1543 Malik KHAWAJA MUHAMMAD and 24 others v. MARDUMAN BABAR KAHOL and 29 others, 2007 SCMR 262 EVACUEE TRUST PROPERTY BOARD and others v. Mst. SAKINA BIBI and others, 2006 SCMR 783 ALMAS AHMAD FIAZ v. SECRETARY GOVERNMENT OF THE PUNJAB HOUSING AND PHYSICAL PLANNING DEVELOPMENT, LAHORE and another, 2007 MLD 1647 UMAR HAYAT and others Mst. KHATOON BIBI and others, 1993 CLC 1013 Syed BASHIR HUSSAIN SHAH and another v. ADMINISTRATOR, THAL BHAKKAR, PLD 1975 SC 678 ANAGER, JAMMU & KASHMIR, STATE PROPERTY IN PAKISTAN v. KHUDA YAR AND ANOTHER, PLD 1963 SC 382 IMTIAZ AHMA v. GHULAM ALI AND OTHERS, PLD 1978 L 1394 AHMAD ETC. V. FAZAL MOHAMMAD, 2011 YLR 1327 Mst.

WAZIRAN MAI through Legal heirs and 29 others v. RIAZ AHMAD and 3 others.

5. Conversely, learned counsel for respondent No.1, in his arguments reiterating the contents of the comments/para-wise reply to the memo of petition, has contended that the petition is not maintainable as the petitioner, instead of filing 2nd appeal, the remedy available under the law to challenge the order passed in civil appeal, filed the present constitutional petition. Further contended that the present petition as framed and submitted is not maintainable on the point of facts. The petition in its original form is an independent petition as evident from the reliefs prayed therein as well as the parties impleaded therein. Further contended that the jurisdiction of this Court under Article 199 of the Constitution could only be invoked if the concerned government functionary refused to do whatever is required to do under the law or the concerned government functionary do something that is not permitted to do under the law. learned counsel supported the judgment impugned in the instant petition being based on sound principle of law. Further contended that the petitioner through the instant petition is seeking relief for condonation of delay in filing of Civil Appeal No.101/2008 in the appellate Court, which civil appeal has already been dismissed on the ground of limitation vide judgment dated 06.08.2009. It is also contended that the decree of trial court was passed on 19.12.2006 whereas the Civil Appeal No.101/2008 was filed by petitioner on 08.08.2008 along with application U/s 5 of Limitation Act, which was hopelessly time barred by 597 days. Furthermore, in the limitation application no plausible grounds were mentioned which could justify the stance of the petitioner for non-filing the appeal in time. Furthermore, the petitioner also failed to explain the delay of each day after the file returned by the counsel who allegedly deceived the petitioner and not filed the appeal in time. It is also argued that no ground was urged by the petitioner before the first appeal court, except the ground for seeking condonation of delay in filing appeal, therefore the appeal was decided on the ground of limitation only. It is also argued that aggrieved party must pursue legal remedies with utmost diligence and satisfy conscious of Court for approaching it beyond prescribed period of limitation, even if objections to that effect were

not raised. Furthermore, it was the duty/obligation of the petitioner to justify each day's default in filing proceedings, because with lapse of time valuable rights would accrued to the respondent furthermore, principle of justice and fair play would not help those who were extraordinary negligent in ascertaining their rights and despite becoming aware about alleged void order adverse to their interests remained in deep slumber. It also argued that failure to convey correct information by counsel to his client is not sufficient ground for condonation of delay. Furthermore, if the petitioner is aggrieved by any alleged act of his counsel viz. not filing appeal in time, the remedy is to file suit for damages against the said counsel. But the period of 597 days could not be allowed to be condoned on the said ground. It is also argued that the petitioner in the present petition has attempted to bring on record the documents, which were neither before the learned trial court and or before the learned lower appellate court and further genuineness whereof are also disputed, hence the same cannot be considered by this court under the constitutional jurisdiction. Lastly, argued that the judgment and decree passed by the trial court is based on the evidence and is liable to be maintained and further the first appeal was rightly dismissed being barred by time. Hence no question arises to interfere with the judgments passed by Courts below and the petition is liable to be dismissed. The learned counsel in support of his stance in the case has relied upon the following case law:

2010 SCMR 1437 TEHSIL NAZIM TMA, OKARA v ABBAS ALI and 2 others, PLD 2010 SC 759, In the matter of: HUMAN RIGHTS CASES NOS.4668 OF 2006, 1111 OF 2007 and 15283-G of 2010, 2014 CLC 639 ABDUL FATAH BHUTTO and others v. ELECTION COMMISSION OF PAKISTAN through Secretary and 3 others, PLD 2003 Karachi 691 JEHAN KHAN v. PROVINCE OF SINDH and others, PLD 1997 SC 397 MUHAMMAD RAZ KHAN v. GOVERNMENT OF N.-W.F.P. and another, 1981 SCMR 194 MUHAMMAD RAMZAN AND 4 OTHERS v. SETTLEMENT AUTHORITIES AND 2 OTHERS, PLD 1955 Dacca 63 NAZIR AHMAD v. THE PROVINCE OF EAST BENGAL, EAST PAKISTAN, 1988 SCMR 1354 WATER AND POWER DEVELOPMENT AUTHORITY v. AURANGZEB, 2007 SCMR 1560 REHMAT DIN and others v. Mirza NASIR ABBAS and others, PLD 2008 SC 462 IMTIAZ ALI v. ATTA MUHAMMAD and another, 1970 SCMR 471 WALI MUHAMMAD AND ANOTHER v. GHULAM RASOOL, 1988 SCMR 964 ALLAH DITTA v. GHULAM HAIDER and others, 1986 SCMR 322 SADIQ HUSSAIN and others v. GHULAM

RASOOL, 2008 SCMR 1339 DOST MUHAMMAD (deceased) through L.Rs v. MUHAMMAD YOUSAF and others, 1991 CLC 1098 MUHAMMAD SULTAN and others v. FAQIR ULLAH and others, 1986 CLC 1079 AHMAD SHAH and 3 others v. Mst. MUNAWAR BEGUM and 3 others.

6. Respondent No.2 though was not present at the time of arguments yet after the case was reserved for judgment, written synopsis on his behalf has been filed wherein respondent No.2 supporting the stance of the petitioner prayed for remand of the case to the trial court as now he intends to appear in the witness box and give evidence against respondent No.1, who allegedly destroyed many families including petitioner. From the perusal of record, it appears that respondent No.2 in respect of various other apartments in the same building in which subject apartment is situated, filed various civil suits against respondent which were dismissed and subsequently the appeals preferred against the dismissal of the suits have also been dismissed. From the perusal of record, it also appears that the respondent No.2 despite various notices and opportunities failed to produce himself to give evidence in suit No. 931 of 2001 resulting which his side of evidence was closed by the learned trial court. Respondent No.2 also failed to appear before the learned first appellate Court. Record also shows that present petition was filed on 12.08.2009 and since then despite various notices served upon respondent No.2 no counter affidavit/objection to the present petition has been filed. In the circumstance filing of written synopsis supporting the stance of the petitioner, at this stage, when the copy of the same has not been supplied to the counsel for respondent, cannot be taken into consideration.

7. We have heard learned counsel for the parties, perused the submissions in writing, the documents available on record and the case law cited at the bar.

8. From the record, it transpires that the learned trial court after considering the evidence available on record passed the judgment and decree, in suit No.931 of 2001. The learned trial while dealing with the issues “(1) Whether the defendant No.1 is legally in occupation of flat bearing No.10, 5th floor in the above mentioned building? and (2)

Whether defendant No.2 was legally competent to hand over the possession to defendant No.1 in lieu of his legal dues? passed following orders:

“ Issues No.1 & 2:

Burden to proof of above lies upon the defendant. the case of the plaintiff is that he had given the contract of construction to the defendant No.2 but the defendant No.2 left the building uncompleted thereafter plaintiff got remaining construction completed. It is further case of the plaintiff that defendant No.1 disclosed that defendant No.1 occupation of flat No.10 on the 5th floor illegally, on enquiry defendant No.1 disclosed that defendant No.2 in lieu of his salary has handed over the possession of the flat to him in the building, that if the defendant No.2 give him his outstanding dues he would ready to vacate the said flat. Plaintiff further stated that he enquired from defendant No.2, who denied regarding the outstanding dues of defendant No.1. Defendant No.1 appeared and stated that same story as stated by the plaintiff. During the cross examination defendant No.1 deposed as under:-

“It is correct that I have not produced any documentary proof in respect of that Javed Hashmi had given the flat in question to me against my services/wages. It is correct that I have not produced any witness in whose presence Javed Hashmi promised with me. for the flat in question. It is correct I do not possess the title documents.”

The evidence of the plaintiff is supported by the documents which shows that plaintiff is lawful owner of the suit property. as such agreement was executed with defendant No.2 for construction of building whereas the case of defendant No.1 that defendant No.2 agreed to give him flat in the building on consideration of his salary but no any amount is mentioned in the written statement nor brought on record that how much amount was outstanding against the defendant No.2. It is also not mentioned the sale consideration of the suit flat. It is came on record that defendant No.2 constructed the ground +3rd floor and left the uncompleted work and remaining work was completed by the plaintiff. But the defendant No.1 is in occupation of flat No.10 on the 5th Floor. He himself admitted that he do not possess any title documents. The defendant No.2 has filed the written statement in this matter, thereafter did not turn up for evidence before this court. In his written statement defendant No.2 even denied the version of defendant No.1 the plaintiff never agreed to deliver any flat to defendant No.1 in consideration of his services he did not even executed any agreement with the defendant No.2 on such terms and condition, the defendant No.2 had no authority to deliver the possession of flat No.10 on the 5th floor, the possession of defendant No.1 is illegal and without lawful authority. Hence these issues are answered in negative.

The petitioner challenged the above said judgment and decree in civil appeal No. 101 of 2008 after a delay of five hundred and thirty-seven (537) days. Along with the said appeal he had also filed application under section 5 of Limitation Act. Relevant portion of the affidavit, sworn by the petitioner in support of the limitation

application, mentioning the only reason for delay in filing the application is reproduced as under for the sake of ready reference:

“2. That after judgment and decree in suit No.931/2001 was passed on 09.12.2006 by the senior Civil Judge No.X, Karachi south and appeal was handed over to an advocate Abdul Rasheed Shaikh who took a sum of Rs.6000/-and did not file the appeal for which I am being ejected by the trial court on the misconduct of advocate.

The learned lower appellate court after hearing counsel for the parties dismissed civil appeal bearing 101 of 2008 on 06.08.2009. relevant portion of the said judgment, for the sake of ready reference is reproduced as under:

“Considering the arguments of both the learned counsels for the parties and perusal of application U/s 05 of the Limitation Act along with the affidavit of appellant and counter affidavit of the respondent No.1 shows that judgment was passed and decree was prepared on 19.12.2006 and on the same day, i.e., 19.12.2006 certified copy of the judgment and decree was applied and the same was delivered to him on 21.12.2006 and this appeal was filed on 08.08.2008 after lapse of 537 days. From the further perusal of affidavit filed by the appellant along with application U/s 05 of the Limitation Act shows that he has not given any proper office address of the said advocate engaged by him to file this appeal and only he has given the name as Rasheed Ahmed Shaikh. According to limitation Act there is mandatory provision of law that appellant should explain each and every date of delay regarding filing of appeal but it has not been explained by him, therefore, considering all these aspects of the case it shows that after 537 days delay, appellant filed this appeal, hence application under section 05 of Limitation Act is dismissed with no order to cost.

Since an application under section 05 of Limitation Act has been dismissed, therefore, appeal filed by the appellant stands disposed of accordingly with no order as to cost.”

9. From the perusal of above, it appears that the learned trial court after recording evidence and discussing the same in the judgment, decreed the suit in favour of respondent No.1, against which, despite having knowledge of the judgment on the very same day when it was announced, the petitioner did not take steps to file civil appeal within the time prescribed under the law. From the perusal of record it also appears that the petitioner, in the limitation application, filed along with civil appeal, neither mentioned detail of facts that when counsel, against whom the allegation is that he did file civil appeal, was engaged, nor when the petitioner had handed over the certified copies of the judgment and decree passed in the suit No. 931 of 2001 to the said counsel nor after handing over the brief to the counsel, what steps

he had taken to pursue the case, nor he had placed on record anything in writing to show that he was diligent and had enquired from the counsel about the appeal. Furthermore, from perusal of memo of appeal it appears that petitioner did not mention the error and illegality committed by the learned trial while passing the judgment and decree impugned therein or what substantial piece of evidence, which goes in the favour of petitioner, has been overlooked/ignored by the learned trial court.

10. The precise ground that petitioner has for the filing the appeal, after a delay of 537 days, was/is that it was on account of negligence of the counsel. The said reasons, asserted by the petitioner for none filing of civil appeal for such a long period of more than five hundred days could only be attributed as slackness on the part of the petitioner. Whereas it is a settled proposition of law that law helps the vigilant and not the indolent. Furthermore, the negligence of a counsel would not constitute sufficient ground for condonation of delay. In this regard reliance can be placed in the case of Jhanda v. Maqbool Hussain and others (1981 SCMR 126). The only remedy available to the petitioner, in respect of negligence of his counsel for not filing the appeal in time, is to file a suit for damages against the counsel. Reference in this regard may be made to the decisions in the cases of Mirza Muhammad Saeed v. Shahabuddin and 8 others (PLD 1983 SC 385), Nek Muhammad v. A.C. Jhelum (1986 SCMR 1493) and WAPDA through its Chairman, and 4 others v. Karam Din (2005 YLR 341).

11. It is also well settled that filing an application for condonation of delay under Section 5 of the Limitation Act each day's delay has to be explained, as after the expiry of limitation a vested right is created in favour of the other side and once limitation starts running no subsequent event could stop the same. One can take guidance from the decision in the case of Commissioner of Income Tax v. Rais Pir Ahmad Khan (1981 SCMR 37). Furthermore, condonation of the delay is always a prerogative of the Court which has to be exercised rationally and judicially, which in the present case has been done and if the order passed by an authority is neither perverse nor tainted with malice but

based on sound reasons for rejecting the application for condonation of delay, that said order cannot be interfered with.

It is also well settled that the Court is under a bounden duty to dismiss the suit, appeal or application, if the same is found to be barred by limitation that is why the law framers had used the word "shall" in section 3 of the Limitation Act, however, there are certain exceptions to this law as well. Normally, the Court condone the delay where a plausible explanation constituting a sufficient cause for not approaching the Court within time has been mentioned. In the present case, the assertions made in the affidavit filed by the petitioner (appellant before the lower appellate court) in support of limitation application had been strongly controverted by filing the objections counter affidavit etc. by the respondent No.1 before the appellate-Court. The Hon'ble Supreme Court in the case of *Ali Muhammad v. Chief Settlement Commissioner* (2001 SCMR 1822) has held as under:

"because limitation creates a right in favour of one of the parties, therefore, delay in filing of proceedings cannot be condoned lightly unless it is shown that there are sufficient reasons to do so or the impugned order is coram non judice or is a void order for any strong legal reason delay cannot be condoned".

In view of the above we find that application for condonation of delay was deficient in many respects and the lower appellate Court has rightly dismissed the appeal as barred by time.

12. Besides above, the learned counsel for the petitioner has also attempted to argue that judgment impugned in the present petition is void hence the same is challengeable in the writ jurisdiction of this Court. The main thrust of this argument was that the documents, which the petitioner filed along with application under Order VI rule 17 of CPC, though are relevant and establish the right of the petitioner over the subject property, however, the same were not placed before the learned trial court and the appellate court by the counsel engaged by the petitioner at the relevant time. Furthermore, the perusal of record also shows that the petitioner after judgment and decree of the trial court neither mentioned the facts related to the documents in the memo of civil appeal nor even in the present petition. The record also does not show that the petitioner has filed any proceedings for declaration of his ownership right in respect of the subject property. In the circumstances,

arguments of learned counsel for the petitioner that impugned judgments are void does not have any force as non-filing of documents by the petitioner before the trial court and/or before the appellate court would not render the impugned judgments void and illegal.

13. Besides above, the question pertaining to appreciation of facts cannot be resorted to in exercise of constitutional jurisdiction as by doing the same would amount to converting the petition into a revision or second appeal. A writ petition is not a substitute either of a revision or a second appeal.

14. It is now well established that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the frame work of Constitution, and if there is any error on the point of law committed by the courts below or the tribunal or their decision takes no notice of any pertinent provision of law, then obviously this court may exercise Constitutional jurisdiction subject to the non-availability of any alternate remedy under the law. This extra ordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation. This Constitutional jurisdiction is limited to the exercise of powers in the aid of curing or making correction and rectification in the order of the courts or tribunals below passed in violation of any provision of law or as a result of exceeding their authority and jurisdiction or due to exercising jurisdiction not vested in them or non-exercise of jurisdiction vested in them. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. So far as the exercise of the discretionary powers in upsetting the order passed by the court below is concerned, this court has to comprehend what illegality or irregularity and/or violation of law has been committed by the courts below which caused miscarriage of justice. Reliance is placed on the case Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others (2015 PLC 259).

15. Reverting to the case in hand, it is an admitted position that the petitioner did not prefer any second appeal against the judgment passed

by first appellate court, hence the same cannot be questioned in the present petition as the constitution petition may not be considered a substitute of second appeal against the orders passed by first appellate court. Furthermore, learned counsel for the Petitioner could not point out any substantial error and or any illegality, infirmity or jurisdictional error in the impugned judgment, which could warrant interference by this court in extra ordinary jurisdiction of High Court as the judgments impugned herein are well reasoned, based on the evidence on record and sound principles of law.

16. The case laws cited by learned counsel for the petitioner have been perused and considered with due care and caution but are found distinguishable from the facts of the present case and hence the same are not applicable to the present case.

17. The upshot of the above discussion is that we are of the view that the present petition is not maintainable and as such the same is dismissed.

Judge

Judge