

# IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No. 149 of 2016

IInd Appeal No. 137 of 2016

## Hearing of Priority case.

1. For hearing of CMA No. 9874 of 2016.
2. For hearing of CMA No. 9876 of 2016.
3. For hearing of Main Case.

## ORDER

Date of hearing : 11<sup>TH</sup> April, 2018.

Date of Order : 17<sup>TH</sup> July, 2018.

M/s. Ali Akber Poonawala, Nadir Khan Burdi and Shoukat Mohammad Ali,  
Advocates for the appellant in IInd Appeal No. 149 of 2016.

Mr. Mazhar Imtiaz Lari, Advocate for appellant in the connected appeal No.  
137 of 2016.

Mr. Ch. Muhammad Iqbal, Advocate for respondent No. 1.

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**Kausar Sultana Hussain, J:-** Through this civil miscellaneous application under Section 5 of Limitation Act, (CMA No. 9874 of 2016) the appellant sought condonation of two days delay in filing present second appeal owing to the reason that original file was lost in L.D.A office . Law Officer of the appellant authority i.e. Lyari Development Authority has enclosed his own affidavit alongwith this application.

I have heard the learned counsel for the appellant/defendant No. 1 and respondent No. 1/plaintiff/decreed holder and respondent No. 2.

After hearing the arguments and perusal of record with due care and caution, I am of the firm view that the learned counsel for the appellant has

applied for obtaining certified copy of the judgment dated 12.08.2016 passed by the learned VIIth Additional District Judge Karachi-East on 13.08.2016 and copy of said judgment was delivered to him on 07.09.2016 (on 26<sup>th</sup> day of application) and the counsel for the appellant has submitted present appeal in the office of this Court on 07.12.2016, after delay of two days. The learned counsel for the appellant/defendant No. 1 has taken plea for delay of two days in filing this present second appeal that the original file was lost in L.D.A Office. Reason given by the learned counsel for the appellant/defendant No. 1 seems incomplete, as he has not specified in his statement that which original file was lost, when it was lost and when he found it traced. Per record certified copy of the judgment impugned was received by the appellant/defendant No. 1 on 07.09.2016, while after that he availed more than ninety days in filing appeal without any cogent and sound reasons. Limitation creates a valuable right in favour of a party, who is deriving benefit, therefore, such right cannot lightly be intercepted. Aggrieved party is bound to be vigilant in invoking legal remedies within the stipulated period, unless extraordinary circumstances are available to show inability for not approaching the court within that period. The learned counsel for the respondent/plaintiff has relied upon 1980 CLC 1446 (Peshawar) wherein it was held that " It is settled law that in order to have the benefit of section 5, Limitation Act, it is the duty of the appellant to explain the delay the elapses beyond the period allowed by the law for filing the appeal. The existence of sufficient cause is a condition precedent for the exercise of the discretion under this section. The expression "sufficient cause" is not defined anywhere in Limitation Act, but is settled beyond dispute that it must mean a cause which is beyond the control of the party invoking the aid of the

section. A cause for delay which, by due care and attention, the party could have avoided, cannot be sufficient course. The test, therefore, whether or not a course is sufficient is to see whether it could have been avoided by the party by the exercise of due care and attention; in other words, whether it is a bona fide cause, in as much as nothing shall be deemed to be done bona fide or in good faith, which is not done with due care and attendance."

Case laws relied upon by the learned counsel for the appellant are irrelevant in the circumstances of case in hand.

In the instant matter cause of delay in filing present appeal neither cogent nor sufficient to believe that the Law Officer did not handle the original file of the case with due care and contend and lost it. I, therefore, find no reason to allow this application of condonation of delay, hence I dismiss it. Consequently, the appeal filed by the appellant/defendant No. 1 is also dismissed alongwith listed applications.

J U D G E

Faheem/PA