

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 29 of 2006

Before: **Mr. Justice Irfan Saadat Khan**
Mr. Justice Fahim Ahmed Siddiqui

Muhammad Imran Mustaqeem & othersAppellants

Versus

Muhammad Mustaqeem & others..... Respondent

Date of hearing: **11.03.2020**

Date of judgment: _____

Mr. Jawaid Mir, advocate for the appellants
 Mr. Abdul Haleem Siddiqui for respondent No. 3
 Nemo for respondents No. 1 (i) to 1(vi), 2 & 3

J U D G M E N T

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FAHIM AHMED SIDDIQUI, J: The learned Single Judge has passed impugned order in SMA No. 334 of 2001, whereby the sale certificate was directed to be issued in favour of respondent No. 3 (auction purchaser).

2. At the very outset, the learned counsel for the respondent No. 3 objected that the instant appeal is time-barred, as such the parties are directed to address regarding the issue of limitation first. It is worth noting that no application under Section 5 is filed with instant appeal.

3. The learned counsel for the appellants opens his arguments by submitting that since the instant matter is an outcome of a succession petition; therefore, the limitation does not attract in the same. He contends that the impugned order was pronounced on 19-12-2005 and the

appellants have applied for the certified copy of the order on 27-12-2005, which was received by the appellants on 14-01-2006 and if it is calculated precisely, it will not be treated as time-barred. He submits that it is mentioned on order-sheet that the matter was reserved on 21-11-2005 while the date of passing the impugned order is not mentioned, as such, it is apparently a mistake of court, which cannot come in the way of the appellants. In support of his contentions, he relies upon teaming number of case laws.

4. Conversely, learned counsel for respondent No. 3 submits that since the appeal is time-barred, as such the instant appeal cannot proceed further. According to him, the impugned order was passed on 21-11-2005 and not on 19-12-2005. He submits that although in the impugned order date of hearing is mentioned as 21-11-2005, however, no date is mentioned under the signature of the learned Single Judge, as such it appears that the order was passed on the same date. In this respect, he draws attention towards the order sheet dated 23-11-2005 which indicates that the appellant filed urgent motion (CMA 2025/05) and application for suspension of order dated 19-12-2005 (CMA 2026/05). He makes it a great point in his favour by submitting that filing of application on 23-11-2005 indicates that the order was already passed on 21-11-2005 and by calculating period from that date the appeal is hopelessly time-barred. He also cited a good number of case laws in support of his arguments.

5. We have heard the arguments advanced and have gone through the relevant record. The controversy between the parties revolves on the sole point of date of passing the impugned order. The appellant contends that the impugned order was passed on 19-12-2005 while respondent No. contradicts it by submitting that the same was passed on 21-11-2005. This controversy can easily be resolved from the factual

analysis, as such no needs to ponder over cited case law, as every case depends on its own facts.

6. It is the admitted position that the matter was heard on 21-11-2005, as this fact also transpires from the impugned order. The impugned order does not indicate any date of passing the order while the date is also not mentioned underneath the signatures of the learned Single Judge. Nevertheless, the diary sheet of R & Ps indicates that on that date, the order was reserved. It is worth noting that on 21-11-2005, the learned single judge has passed an order i.e. "*Heard the learned counsel. Reserved for orders*". If on that date, the impugned order was passed then there was no reason for passing the aforementioned order. From the above order passed on 21-11-2005, it appears that at least on that date no other order was passed but the matter was reserved for passing an order.

7. Now a question arises when the impugned order was passed? In this respect, the learned counsel for the respondent No. 3 has drawn attention towards two CMAs, i.e. CMA 2025/05 and CMA 2026/05, amongst them former pertains to urgent hearing while the latter is filed under Section 151 CPC for the stay of order dated 19-12-2005 for 20 days to enable the appellants to file an appeal against the same.

8. After granting the urgent application, the matter was fixed for hearing on 26-12-2005. It transpired from the diary sheet that after 21-11-2005, the matter was not fixed for any purpose and meanwhile the impugned order was passed. It is also reflected from the diary sheet that the aforementioned CMAs were filed in the office on 22-12-2005 and fixed for hearing on 23-12-2005, when notices were issued for 26-12-2005. So far as the date of Order Sheet mentioning 23-11-2005 is concerned, it is apparent from the record that it was mistakenly mentioned as 23-11-2005 instead of 23-12-2005. It is settled law that no one can be vexed from the mistake of court. However, on 26-12-2005, the learned Single Judge passed an order for suspension of the impugned order in which the

learned Single Judge has mentioned that the impugned order was passed on 19-12-2005.

9. Now it becomes crystal clear that the impugned order was passed on 19-12-2005, as such period of limitation for the filing of an appeal is to be calculated from 19-12-2005 and if 20 days counted from 19-12-2005 the appeal ought to be filed on 08-01-2006. But it is necessary to consider 14 days period of winter holidays, which starts from 26th December and ends on 9th January of each year. If this period of 14 days is deleted, the appeal should be filed on 22-01-2006, which was Sunday, as such filing of appeal on 23-01-2006 is within time even if the period of delay in obtaining the copies is not considered, as the copies were ready to deliver on 31-12-2005. We, therefore, hold that the appeal is within time, as such office is directed to fix the matter for arguments on merits.

JUDGE

JUDGE