

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No.S-1152 of 2011

M/s Agfa Colour Services (Pvt.) Ltd.
Versus
Additional District Judge-IV & another

A N D

C.P. No.S-1153 of 2011

M/s AMA Colour Laborities
Versus
Additional District Judge-IV & another

Date of Hearing: 08.12.2017

Petitioner: Through Mr. Shahenshah Husain along with
Mr. Arshad Hussain Advocate.

Respondent No.2: Through Mr. Mohammad Ashraf Kazi Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- These two petitions were filed by the petitioners/tenants against conflicting findings of the two Courts below. The ejectment applications filed by the respondent No.2 were allowed on the ground of default. There were two tenancy agreements; one in respect of Shops No.1 and 2 dated 05.01.1992 and the other in respect of Shop No.3 dated 03.05.1980. The ejectment applications bearing Rent Case No.424 and 575 of 2006 were dismissed by the Rent Controller by independent orders but of a common date of 24.12.2010 on the ground that the petitioners were depositing rent from January 2004 in MRC No.672 of 2004 and such rent amount was also withdrawn.

The trial Court framed issues/points for determination, which are as under:-

- i) Whether without any authority or Power of Attorney the opponent's witness namely M. Abdul Ali is empowered to lead the evidence on behalf of opponent's company?
- ii) Whether the opponent has committed willful default in payment of monthly rent from January 2004 including KESC charges?
- iii) What should the order be?

Aggrieved of the dismissal of the Rent Cases the respondent filed appeals bearing FRA No.32 and 33 of 2011 in the respect of the demised shops wherein the findings of the trial Court were reversed. The appellate Court framed points for consideration/determination which are as under:-

- i) Whether the appeal is time barred?
- ii) Whether the impugned order dated 24.12.2010 requires interference of this Court?
- iii) What should the order be?

The first point that was considered by the appellate Court was whether appeal was barred by time followed by another point which relates to the interference in the order of the Rent Controller. The appellate Court decided the first point that relates to the limitation in negative whereas point No.2 was decided in affirmative and consequently the appeal was allowed. I would accordingly deal with the issues of limitation first.

The order was announced by the Rent Controller on 24.12.2010 which was the last working day before winter holidays. The application to obtain certified copy of the order of the Rent Controller was filed on 08.01.2011 (5th working day after winter holidays) and copy was delivered/received on 24.01.2011. The appeal was filed on 18.02.2011.

Learned counsel for respondent submitted that since following day when the order was announced winter holidays commenced therefore such days until opening day i.e. 03.01.2011 would not count whereas 04.01.2011 to 07.01.2011 would be included towards

computation and since copy was received on 24.01.2011 therefore from the date of filing of the application for certified copy till its receipt would also be excluded from computation. Counsel further submitted that before filing of the appeal there were two more gazetted holidays on 15.02.2011 and 16.02.2011 for Rabiul Awwal which shall also be excluded while computing the period.

Mr. Shehanshah Hussain, learned counsel has opposed the mechanism for computing the period of limitation. He submitted that since the period of limitation, as prescribed under Sindh Rented Premises Ordinance, 1979 is of 30 days from the date of order/judgment it is to be counted and computed from the date of the order i.e. 24.12.2010 and since application was not filed on the day when the order was announced, therefore, winter holidays would also be countable while computing the period. Counsel further relied upon the fact that the application for certified copy was not filed on the opening date but in fact it was filed belatedly on 08.01.2011 and hence he submitted that from 24.12.2010 to 07.01.2011 the period cannot be excluded from computation as there was nothing to prevent respondent from filing an application on the day when the judgment was announced. Learned counsel for petitioner has relied upon AIR 1920 Madras 359(2) and another case reported in AIR 1920 Madras 1025(1).

I have heard the learned counsel for the parties and perused the material available on record.

Section 21 of the Sindh Rented Premises Ordinance, 1979 provides a period of 30 days from the date of the order. There is no explanation either through an application or through an affidavit provided by the respondent as to what prevented him from filing an application to obtain certified copy on the same day. The respondent has also not denied the

fact that the order was announced during Court hours, hence in all fairness the respondent ought to have filed an application to obtain certified copy on the same day, if the respondent was desirous of excluding those days which would be consumed by the copying branch in preparing the certified copy and winter holidays. Not only the fact that the applications were not filed on the same day, but it was on the 5th day after the opening day when application was filed. Had it (order) been announced during vacation/winter holidays the respondent would have been entitled for exclusion of such days provided an application would have been filed on the opening day however it was not so as the order was announced on day before winter holidays commenced and the application was filed on 5th day after winter holidays. If the respondent chooses not to file an application for certified copy he took the risk of computing all such days till an application was filed i.e. on 08.01.2011.

In the case reported in AIR 1920 Madras 1025(1) (Supra) a Division Bench held that where a judgment in case was pronounced on an early hour on the last day preceding certain holidays and the application for copy thereof was made on the day when the Court reopened after the holidays the appellant would not be entitled to the deduction of holidays in computing the period of limitation by the appellant.

		Countable	Non-countable
1	24.12.2010	Judgment day	
2	25.12.2010	1	
3	26.12.2010	2	
4	27.12.2010	3	
5	28.12.2010	4	
6	29.12.2010	5	
7	30.12.2010	6	
8	31.12.2010	7	
9	01.01.2011	8	
10	02.01.2011	9	
11	03.01.2011	10	
12	04.01.2011	11	
13	05.01.2011	12	
14	06.01.2011	13	
15	07.01.2011	14	

16	08.01.2011		=====	
17	09.01.2011		=====	
18	10.01.2011		=====	
19	11.01.2011		=====	
20	12.01.2011		=====	
21	13.01.2011		=====	
22	14.01.2011		=====	
23	15.01.2011		=====	
24	16.01.2011		=====	
25	17.01.2011		=====	
26	18.01.2011		=====	
27	19.01.2011		=====	
28	20.01.2011		=====	
29	21.01.2011		=====	
30.	22.01.2011		=====	
31	23.01.2011		=====	
32	24.01.2011		=====	
33	25.01.2011	15		
34	26.01.2011	16		
35	27.01.2011	17		
36	28.01.2011	18		
37	29.01.2011	19		
38	30.01.2011	20		
39	31.01.2011	21		
40	01.02.2011	22		
41	02.02.2011	23		
42	03.02.2011	24		
43	04.02.2011	25		
44	05.02.2011	26		
45	06.02.2011	27		
46	07.02.2011	28		
47	08.02.2011	29		
48	09.02.2011	30 th day		
49	10.02.2011	31		
50	11.02.2011	32		
51	12.02.2011	33		
52	13.02.2011	34		
53	14.02.2011	35		
54	15.02.2011	36	=====	
55	16.02.2011	37	=====	
56	17.02.2011	38 th day		
57	18.02.2011	Appeal filed		

The winter holidays would not be excluded from computing the period of limitation as the application to obtain certified copy of the order, in order to exclude the winter holidays, ought to have been filed on the day when the judgment was announced which may be a day before commencement of winter holidays.

In view of the above, since the appeal filed at the appellate Court was barred by time, (8 days), this petition is allowed and the impugned order dated 17.08.2011 passed by IV-Additional District Judge Karachi Central is set aside.

Dated: 19.12.2017

Judge