

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

2nd. Appeal No. 64 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on CMA-136/22
For orders on CMA-137/22
For hearing of CMA-2690/21
For orders on CMA-669/20
For hearing of CMA-11/22
For hearing of CMA-2285/17
For hearing of main case

11.04.2022.

Mr. Azizullah Buriro advocate for appellant No.1.

Mr. Ayaz Hussain Tunio advocate for appellant No.2.

Mr. Fayaz Hussain Leghari Advocate for the respondents No.1 to 3.

Zulfiqar Ahmad Khan, J. In the case at hand, the respondents originally filed a F.C. Suit No. 10 of 2010 in the Court of 3rd. Senior Civil Judge, Hyderabad, which was decided by judgment dated 29.04.2017 granting prayer clauses (a) and (c), which are reproduced as under :-

(a) To grant decree for possession in respect of agriculture land bearing Survey No.11 & 13/1, 2 admeasuring 15-22 acres (2.00 acres already in possession of plaintiffs from Survey No.13/1) deh Boochki Jagir, Tapo Tando Haider, Taluka and District Hyderabad, in favour of plaintiffs and direct the defendants No.1 to 3 to hand over the vacant physical possession of survey Nos. to plaintiffs forthwith.

(c) To restrain the defendants No.1 to 3 from taking any coercive action and from selling the possession of Suit land to any stranger in any manner whatsoever, by themselves or through their agents, attorneys, subordinates, successors, in any manner whatsoever.

2. Decree dated 06.05.2017 was accordingly drawn. Against the said judgment and decree, the present appellants preferred Civil Appeal No.199 of 2017 on 08.07.2017 along with an application under section 5 of Limitation Act, 1908, as the appeal was admittedly barred by limitation. The appellate Court heard the counsel on the point of limitation, who stated that the appellants being poor could not arrange huge amount of Rs.15,000/- to purchase the Court stamps and counsel fees which caused delay beyond the

control and requested that the delay in filing of the said appeal be condoned.

Learned appellate Court choose to dismiss the appeal on the point of limitation with the following observations :-

“On perusal of file, it transpires that the reason in affidavit accompanied with application U/S 5 of Limitation Act, 1908 is that the appellant's brother due to poverty could not arrange Court fee stamp which does not appeal to a prudent mind because the appeal could have been preferred by mentioning such ground of not arranging Court fee stamp, therefore, it appears that the appellants failed to give due diligence in preferring the appeal in time and the case law relied upon by the Counsel for appellants is on the ground of erroneous belief of the counsel that the appeal would lie before Honourable Supreme court of Pakistan, but later on he realized that such appeal shall lie to a Division Bench and not to Supreme Court and such bonafide mistake was on the part of counsel whereas, the ground for delay caused to file the above appeal raised in above application is not of wrong impression, but willful negligence as the appellants failed to prefer the appeal within time without furnishing Court fee stamp by mentioning such fact for seeking time to arrange the Court fee stamp which ought to have been considered as bonafide intention of the appellant but failed.”

3. learned counsel for appellants before me has placed reliance on the judgment reported as (2001 SCMR 159) and stated that the Hon'ble Supreme Court has directed that the matters be heard on merits rather than been ousted on technical grounds, hence the present second appeal be allowed so that case of the appellants could be decided on merits.

4. Learned counsel for the respondents No.1 to 3 to the contrary stated that the appeal was prima facie time barred and the reasons presented for the condonation of the delay were not cogent. He stated that valuable rights of the respondents have cemented and it is a fundamental principle of law that one has to be vigilant and he himself is solely culpable for the consequences of failure in respect thereof. He further stated that the law of limitation is statutory prescription and the same stands admittedly violated and, unless this Court is of the opinion that such violation may be justifiably condoned, it is imperative that the present second appeal be dismissed as the order of the 1st. Appellate Court does not pose any illegality or irregularity and does not merit any interference.

5. Heard the counsel and perused the record.

6. The fact that the appeal is time-barred is demonstrated without any doubt, hence it now remains the only duty of this Court to determine whether sufficient ground(s) existed before the appellate Court to condone the delay or not.

7. Per appellant's counsel, the reason for the delay was that the appellant could not arrange money for Court fees and to pay his counsel as they were poor and crux of the submissions of learned counsel for the appellant is that Court is saddled with sacred duty to dispense justice amongst the litigating parties, hence should permit the instant case to proceed on merits by not divulging in technicalities. To answer such submission, I would like to point out that there is no cavil to the proposition that Courts enjoy the inherent power to condone delay in cases where the delay is duly explained and justified but in the present circumstances, the appellant remains unable to justify the delay for any reason beyond his control, he may have moved the appeal without Court fee and sought removal of such objection posed by the office suitably. In this case, there is a delay of more than one month and the Honorable Supreme Court in the case of Lt. Col. Nasir Malik versus Additional District Judge Lahore, reported as 2016 SCMR 1821 has held that each and every day of delay had to be explained in an application seeking condonation of delay, and in the absence of any such an explanation, application for condonation of delay is to be dismissed. Learned counsel admittedly failed to show that such an exercise was performed by the appellant. Reference in this regard may be made to the following decisions:

Commissioner of Income-Tax Vs. Rais Ahmad Khan (1981 SCMR 37)

Nakuleswar Sikdar Vs. Barun Chandra Chakravorty and another (1971 SCMR 54)

Government of the Punjab through Secretary (Services), Services General Administration and Information Department, Lahore and another Vs. Muhammad Saleem (PLD 1995 SC 396)

Province of East Pakistan Vs. Abdul Hamid Darji and others (1970 SCMR 558)

The Deputy Director, Food, Lahore Region, Lahore, etc. Vs. Syed Safdar Hussain Shah (1979 SCMR 45)

Sheikh Muhammad Saleem Vs. Faiz Ahmad (PLD 2003 SC 628)

8. In the case of Chairman, District Evacuee Trust, Jhelum Vs. Abdul Khaliq through Legal Heirs and others (PLD 2002 SC 436), the Hon'ble Apex Court observed as under:

“4. It has been pointed out number of times that cases pertaining to Federal/Provincial Government or autonomous bodies instituted beyond limitation prescribed by law before subordinate Court, High Court and this Court without assigning any justification acceptable under the law for not approaching the Court within time and in the applications seeking condonation of delay, if filed, invariably the plea is taken that time has been spent in completion of departmental proceedings, therefore, delay may be condoned. The concerned department must know that delay of limitation in filing of proceedings can only be condoned if it is sought for on sufficient grounds otherwise in absence thereof no special indulgence can be shown to such department because it is well-settled that no preferential treatment can be offered to the Government department or autonomous bodies. Their cases have to be dealt with same manner as the cases of an ordinary litigant/citizen. In this behalf, reliance is placed on Central Board of Revenue, Islamabad through Collector of Customs, Sialkot Dry Port, Samberial, District Sialkot and others v. Messrs Raja Industries (Pvt.) Ltd. through General Manager and 3 others (1998 SCMR 307), Lahore High Court, Lahore through Registrar v. Nazar Muhammad Fatiana and others 1998 SCMR 2376, Federation of Pakistan through Secretary, Ministry of Foreign Affairs, Government of Pakistan, Islamabad and 5 others v. Jamaluddin and others 1996 SCMR 727, Pakistan through Secretary, Ministry of Defence v. Messrs Azhar Brothers Ltd. 1990 SCMR 1059 and Government of the Punjab through Secretary (Services), Services General Administration and Information Department, Lahore and another v. Muhammad Saleem PLD 1995 SC 396.”

9. As seen from the above, it is a settled position that the delay may be condoned only where a Court comes to the conclusion that

there was sufficient cause for such condonation, however, perusal of the case at hand reveals that the core reason attributed by the counsel for the delay is that the appellant was a poor person and had no money to pay Court or counsel fees, which grounds in my humble view are not sufficient to justify the condonation, he may have tried his luck by filing an appeal without Court fee and could have sought Court's indulgence on humanitarian grounds to attend to the appeal with an objection with regards payment of Court fee remaining pending. As to the payment of counsel fees, I am sure some lawyers may have deferred fees for a later stage. .

10. The case law cited by the Appellant's counsel pertains to pardanasheen lady, which is not the case at hand. In view of the reasons enumerated supra, I do not see any illegality, irregularity, omission or error as pointed out by the learned counsel for the appellant in the impugned order dated 13.11.2017 passed by the learned District Judge, Hyderabad in Civil Appeal No.199/2017. Resultantly the instant second appeal is hereby dismissed along with the listed applications.

J U D G E