

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

IST APPEAL NO.44 OF 2013

Date	Order with signature of Judge
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1. For orders on CMA No.1340/13
2. For Katcha peshi

05.08.2015

Mr. Ghulam Rasool Korai, Advocate for appellant
Mr. Ghulam Mujtaba Phull, advocate for the respondent

Through instant appeal, the appellant Bank has impugned Judgment dated 4.3.2013, and decree dated 25.3.2013 passed in Suit No.108 of 2010 by the Banking Court No.II, at Karachi on the ground that while decreeing the Suit in favour of the appellant, the Banking Court has allowed certain adjustment towards the principal amount by disallowing charging of mark-up beyond 31.12.2009, on the ground that the running Finance Facility Agreement was not renewed thereafter.

At the very outset, the Counsel for the respondent has raised a preliminary objection with regard to maintainability of instant appeal as being barred by limitation. Counsel for the respondent contends that the appellant had applied for obtaining certified copy of the Judgment and decree on 4.3.2013, and had received the same on 5.4.2013, whereas, instant appeal has been filed on 17.6.2013, without any request for condonation. Counsel has further contended that subsequently the appellant had made another request for obtaining certified copy of the Judgment and decree, and, had received second certified copy on 30.5.2013 and has filed instant appeal on the basis of second certified copy of the Judgment and decree, hence instant appeal is time barred.

While confronted, the Counsel for the appellant could not controvert such position, however contends that some other advocate was appearing on behalf of the appellant before the trial Court, who had obtained the two certified copies of Judgment and decree, whereas, the he has been provided the second certified copy issued on 30.5.2013, and instant appeal has been filed within time on 17.6.2013 on the basis of second certified copy of the Judgment and decree.

After hearing both the Counsel at some length and on perusal of record, we do not find ourselves in agreement with the submissions made by the Counsel for the appellant that since some other Counsel was appearing for the appellant before the trial Court, and had obtained two sets of certified copies of the Judgment and decree, and instant appeal filed on the basis of second certified copy is within time. We are of the view that in the instant case limitation started running from the date of issuance of first certified copy of judgment and decree, and the fact that the certified copy was duly

applied and issued to the appellant on 5.4.2013 has not been controverted before us, nor any such case has been pleaded on behalf of the appellant, therefore, appeal appears to be barred by limitation. In fact such certified copy has only come on record after objection has been raised on behalf of the respondent. The certified copy is issued to the appellant and not to its Counsel and the appellant cannot be allowed to take any benefit in respect of limitation due to any negligence by its Counsel who has been engaged by it. It is further noticed that even no application for condonation of any delay has been filed on behalf of the appellant.

In view of such circumstances, we are of the view that instant appeal is barred by limitation, as certified copy of the impugned Judgment and decree was admittedly issued on 5.4.2013, and the period of 30 days provided under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 for filing an appeal, expired on 5.5.2013, whereas, instant appeal has been filed on 17.6.2013. Accordingly, instant appeal being barred by limitation is hereby dismissed in limine.

JUDGE

JUDGE