

IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD

IIInd Appeal No. 25 of 2018

Appellant : Pakistan International Airline through
Mr. Bisharat Ali Memon, Advocate who is called absent
today.

Respondents : Suresh Kumar and others through
Mr. Usama Yousif Parhiyar, Advocate

Date of hearing & Order : **19.09.2022**

ORDER

ADNAN-UL-KARIM MEMON, J -. Through listed application [MA No. 2123 of 2020] under Section 145 r/w Section 151 CPC the respondents have sought the order for payment of decretal amount to them which was deposited by the appellant on 4.11.2020 in compliance with the order dated 14.9.2020; inter-alia on the ground that main appeal has already been dismissed by this court vide order dated 7.12.2020 and the said order has been maintained by Honourable Supreme Court on 19.5.2021.

Brief facts of the case are that respondents filed suit for damages and compensation valued at Rs. 63,00,000/- against appellant Pakistan International Airline Corporation Ltd. The said suit was decreed to the extent of Rs. 13,00,000/- only. The appellant preferred Civil Appeal No. 260 of 2017 which was dismissed as being time-barred by learned 8th Additional District Judge, Hyderabad vide Judgment dated 28.2.2018, hence the instant IIInd Appeal was filed. This IIInd appeal was also dismissed on 7.12.2020 with the following observation:-

“This second appeal was dismissed for non-prosecution on 9.11.2020. The appellant has filed an application for its restoration. For the reasons disclosed in the affidavit, the 2nd appeal is restored. Counsel is heard as far as the main appeal on merits. This second appeal is arising out of almost concurrent findings. The trial court decreed the suit of the respondents filed for recovery of compensation/damages which they sustained when their flight, all of sudden was canceled while they were traveling back to Karachi-Pakistan. They were on the last day of their visa at the Airport. No justified reason was assigned in the written statement or otherwise suggested in the cross-examination as to what prevailed at the time of canceling the flight. The only reason now addressed by the counsel is that there were some operational issues. This could hardly be a ground to consider the alleged action of the appellant while canceling the flight. They did not lead evidence. Initially, the suit was decreed ex-parte; however, on considering THE

application under Section 12(2) CPC Judgment was set aside and the appellant filed a written statement only. They have not even attempted to accommodate their passengers for any alternate flight from Bombay to Karachi. The appeal of the appellant was also barred by time before the first appellate court, yet I have made an attempt to hear the appellant on merits, apparently even on this score also there is nothing on record to interfere in the findings of the trial court. Consequently, this second appeal is dismissed. “

The above order was challenged before the Honourable Supreme Court of Pakistan in C.P. No. 166-K of 2021. The said Constitutional Petition was also dismissed vide order dated 19.5.2021 with the following observation:-

“Unfortunately, the appeal filed by the petitioner before the first appellate forum was patently barred by limitation and was dismissed as such, the question of limitation having prevailed before the second appellate forum as well, the dismissal order was maintained. However, the learned ASC for the Petitioner has inter alia expressed anxiety that the impugned Judgment may come in the way of the defence that the corporation may take in cases that may ensue. We would, therefore, observe that if any case of the nature similar to the present one is brought the same shall be dealt on its own merits and the impugned Judgment shall not block the defence of the corporation as such. The petition is dismissed.

Now the respondents through listed application seek withdrawal of decretal amount deposited by the appellant before the Additional Registrar of this Court.

Prima facie there is nothing found on record objecting to the listed application or any impediment in allowing the instant application; therefore, the same is accordingly allowed. The office is directed to release the decretal amount to the respondents on proper verification and identification as per rules.

The listed application is allowed in the above terms.

JUDGE