

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
HCA No.10 of 2023

Date	Order with Signature(s) of Judge(s)
1.	For order on CMA No.154/2023 (U/S.5)
2.	For order on office obj/reply at 'A'.
3.	For hearing of Main case

10.05.2023

Mr. Abdul Wajid Wyne, Advocate for the Appellant.

..-.-.-.-.

This High Court Appeal has been filed impugning the judgment dated 29.9.2022 passed in Suit No.1541/2009 alongwith an application under Section 5 of the Limitation Act, for condonation of delay caused in filing the instant HCA, which admittedly is time barred by more than 80 days.

Mr. Abdul Wajid Wyne, Advocate has appeared on behalf of the Appellant. He was directed to firstly argue the limitation application and if he is able to satisfy the Court with regard to the delay caused in filing of this appeal satisfactorily thereafter the matter would be heard on merits.

Mr. Wajid Wyne, stated that in the suit before the learned Single Judge the Appellant, who was the plaintiff in the suit, appeared in person and the matter was reserved for orders on 17.12.2021, however, the judgment was announced on 29.9.2022 and no intimation was given to the appellant with regard to the announcement of the judgment and the appellant was totally unaware of the decision announced by the learned Single Judge on 29.09.2022. As per the learned counsel when the appellant came to know about the judgment, he immediately applied for supplying the certified copy on 15.12.2022, which was provided to him on 20.12.2022 and thereafter he filed the appeal on

10.1.2023 i.e. the first date after the winter holidays. He therefore stated that in view of these facts the delay caused in filing the appeal may be condoned as the circumstances were beyond the control of the appellant. In support of his contention the learned counsel has placed reliance on the decision given in the case of *Mst. Mobin Fatima ..Vs.. Muhammad Yamin and 2 others (PLD 2006 SC 214)*.

Matter has been heard, record has been perused.

It is an admitted position that the present appeal is barred by more than 80 days. The record reveals that in the suit No.1541/2009 it was the appellant himself who has appeared before the learned Single Judge to argue and agitate the matter, being plaintiff (the present appellant) in the matter. It is also a matter of record that the plaintiff in the suit was fully conversant of the fact that the matter has been reserved for judgment on 17.12.2021.

Mr. Wajid Wyne, Advocate during the course of the arguments has stated that the diary of the suit is totally silent with regard to processing of the suit/matter after announcement of the judgment. He was categorically asked that whether after disposal of a matter any diary is needed in a matter until and unless some application is moved in the suit either by the plaintiff or the defendant side, no plausible explanation with regard to this question was available with the learned counsel.

In our view, how could there be a diary in a suit after announcement of the judgment when admittedly neither any application of any nature has been filed either by the plaintiff nor the defendant in the said suit. Once a judgment is announced, in our view the matter culminates until and unless any application

is filed in the said matter either by the plaintiff or the defendant hence there was no occasion for recording of any diary in the suit.

The record also reveals that the appellant, being plaintiff in the suit, has been attending the matter regularly and it is beyond comprehension that when the matter was reserved for judgment, he did not follow the same with regard to announcement of the judgment. Moreover, it is also a matter of record that nowhere it has been demonstrated by the appellant that how he came to know about the announcement of judgment in December, 2022 and as to how he remained aloof of the matter when he has argued the suit himself before the learned Single Judge.

We also do not agree with the counsel appearing for the appellant that intimation with regard to announcement of judgment was never given to the appellant; whereas the cause list of 29.9.2022 clearly reveals that the said matter was fixed for announcement of judgment on that date and was announced by another Judge sitting on the original side, as the sitting of the learned Judge, who has passed the order was in a Division Bench. The case law relied upon by the learned counsel for the appellant appears to be distinguishable from the facts of the instant matter that as in that matter it was duly noted that constitutional petition was allowed on 02.5.2005, the date was neither notified in the main cause list nor in the supplementary cause list issued for 02.5.2005 and that the petitioner came to know about announcement of judgment only on 24.8.2005; whereas in the instant matter the cause list of 29.9.2022 clearly shows that the matter was fixed for announcement of judgment by clearly showing the name of Mr. Justice Zulfiqar Ahmed Khan, and the announcement on the said date was made by Mr. Justice

Muhammad Faisal Kamal Alam sitting on the original side, who announced the said judgment on the said date and appended his signature on the bottom of the judgment by clearly mentioning as “*announced by me on 29.9.2022*”.

These facts in our view are sufficient to show that it was the appellant who was at fault in not properly pursuing the matter, especially when he himself has appeared in the suit as Plaintiff. It is a settled proposition of law that while considering the matter with regard to condonation of delay the person filing the application under Section 5 of the Limitation Act has to demonstrate with reasonable and justifiable grounds delay of each date satisfactorily and in case where the appellant or the applicant, as the case may be, fails to justify the delay of each day satisfactorily, no lease in this regard could be granted to that person, as it is settled proposition of law that after expiry of the limitation period vested rights are created in favour of the other side, which cannot be lightly ignored. Reference in this regard may be made to the decision given by the Hon’ble Supreme Court in the case of *Messrs SKB-KNK Joint Venture Contractors through Regional Director Vs. Water and Power Development Authority and others (2022 SCMR 1615)* wherein it was held that “*the limitation cannot be taken as a mere technicality as by expiry of period of limitation, valuable rights accrue to the other party*”. It is also a settled proposition of law that in time barred matters each day’s delay has to be satisfactorily explained, which in the present matter is totally lacking. The instant appeal thus is found to be hopelessly and miserably barred by limitation, without there being proper and reasonable justification for filing the same in a belated manner, so as to condone the delay caused in filing the

appeal; hence the application bearing CMA No.154/2023 is hereby dismissed. Consequently, the instant appeal also stands dismissed.

JUDGE

JUDGE

SM