Judgment Sheet

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Civil Revision No.S-76 of 2021

Applicants	:	(1)	The District Food Controller/Officer Kashmore @ Kandhkot
		(2)	The Director Food, Food Department Karachi, Sindh
		(3)	The Deputy Director Food, Food Office Larkana
		(4)	The Province of Sindh through Secretary Food, Government of Sindh, Karachi Through Mr.Abdul Hamid Bhurgri Addl. Advocate General
Respondents	:	(1)	Sunil Kumar s/o Pooran Mal Through Mr.Vinod Kumar G. Jessrani, Advocate
		(2)	Jani s/o Ashraf Keerio
		(3)	Aqib s/o Aqil, Jutt
		(4)	The Commissioner, Larkana
		(5)	The Deputy Commissioner, Kashmore @ Kandhkot
		(6)	The Assistant Commissioner, Kashmore
		(7)	The Mukhtiarkar (Rev.) Kashmore
		(8)	The S.H.O PS Kashmore
		(9)	Ashraf Ali Keerio District Food Controller/Officer Kashmore @ Kandhkot Through Mr.Javed Ahmed Soomro, Advocate
		(10)	Taj Muhammad
		(11)	Aqil Jatt, Food Controller Kashmore

Date of hearing : **11.5.2023 & 22.5.2023**

Date of Decision : **14.6.2023**

J U D G M E N T

ARBAB ALI HAKRO, J.- The current civil revision Under Section 115 of the Code of Civil Procedure, 1908 ("**the Code**"), pertains to a challenge against the Order dated 25.6.2021, passed in Civil Appeal No.60/2021 by the District Judge/MCAC Kashmore @ Kandhkot ("**the appellate Court**"). The appeal was dismissed as time-barred, while the Judgment and Decree dated 22.3.2021

passed by Senior Civil Judge, Kashmore ("**the trial Court**"), which decreed F.C. Suit No.140/2020 filed by respondent No. 1 was upheld.

2. The present Revision Application pertains to the factual background involving the filing of F. C Suit No.140/2020 by the plaintiff (respondent No. 1 herein). The suit was filed before the trial Court, seeking permanent and mandatory injunction and recovery of wheat weighing 65,610 kilograms. In the suit, the primary respondent No.1 asserted that he purchased the above-said wheat from the Khanpur District Shikarpur, intending to supply it to the Mehran Flour Mill in Kandhkot. Respondent No.1 pleads that on 16.7.2020, a 22-Veelar Truck bearing registration number NGR-2355, loaded with the wheat as mentioned earlier, arrived near Mehran Flour Mill. At this location, defendants Nos.4 to 14 (respondents Nos. 2 to 11 herein) and Applicant Nos. 1 illegally seized and confiscated the wheat without the guidance of any lawful order passed by an authoritative body. As a result of the unlawful activity, respondent No.1 has incurred significant irreversible losses. Thus, the suit was filed by him before the trial Court with the following prayers: -

a) To direct the defendants to release the wheat crops weight 65,610 KG and handover to the plaintiff immediately without any hindrance, further all the acts and actions taken or intended to be taken by the defendants are illegal, unlawful, malafide, contrary to the law and without adopting the due course of law in the shape of seize the wheat crops, weight 65,610 KG, at Food go-down Kashmore.

b) To restrain the defendants, do not cause irreparable loss to the plaintiff in the shape of keeping illegally wheat crops weight 65,610 KG at Food Go-down Kashmore.

c) To direct the defendants to hand over the wheat crops weight 65,610 KG with all rights as well as the original stander of crops without any hindrance.

d) Cost.

e) Relief.

3. Following the service of summons, District Attorney promptly submitted a statement/memo of appearance on behalf of the official defendants before the trial Court. Additionally, District Attorney filed written statements on behalf of the Defendants. In the written statement of Applicant No.1, also known as Defendant No. 4, it has been stated that no records related to the capture or seizure of wheat belonging to Respondent No.1 have been found in the office. Furthermore, it has been indicated that the concerned centre in charge was informed by letters dated 29.10.2020 and 12.11.2020 to provide the complete record concerning the seizure of wheat. However, it has been reported that the concerned official has not submitted the required document.

4. However, the trial Court decreed the Suit of plaintiff/respondent No.1 vide Judgment and Decree dated 22.3.2021. The appeal against the above Judgment and decree filed by the applicants was dismissed as time-barred vide Order dated 25.6.2021, which is impugned before this Court by filing the present revision application.

5. At the very outset, the learned Additional Advocate General representing the applicants argued that the appellate Court summarily rejected the applicant's appeal without comprehensively addressing the reasons put forth in the application for condonation of delay. He has contended that the appellate Court has not passed separate Order on an application under Section 5 of the Limitation Act1908 before coming to the conclusion that the appeal was time-barred and dismissed the same

without disposing of the application under Section 5 of the Limitation Act 1908. He has also added that the time consumed in obtaining permission from the competent authority for filing an appeal and such corresponding letters were attached with the application under Section 5 of the Limitation Act 1908. However, the same has not been considered/discussed by the appellate Court while dismissing the appeal. Thus, the Order passed by the appellate Court is liable to be set aside, and the matter may be remanded to the appellate Court for a decision on merits after discussing the grounds agitated in an application for condonation.

6. On the other hand, the learned Advocates representing respondents No.1 and 9 extended their No-Objection that the case may be remanded to the appellate Court for proper decision after considering the grounds on which condonation was sought.

7. In light of the arguments presented by the learned counsel for the parties and thorough examination of the material brought on record, I have considered the matter at hand and upon a meticulous evaluation of the Order passed by the appellate Court, it has become evident that the presiding judge did not comprehensively scrutinize the essential elements underlying the case as reflected in the said Order. The appeal was dismissed on the grounds of Limitation without further consideration of the applicants' plea for condonation of delay pursuant to the application under Section 5 of the Limitation Act 1908. As a result, this Court will be confined solely to examining the issue of Limitation. While perusing the impugned Order of the appellate Court, it reveals that the trial Court has passed the Judgment and decree in F.C Suit No.140 of 2020 on 22.3.2021. The applicants have filed Civil Appeal No.60/2021 on 25.6.2021, after a delay of about 95-days along with an application under Section 5, of the Limitation Act 1908, in the office of the appellate Court, whereby

the applicant sought condonation of delay in filing such appeal on the ground that *"appellants were not informed about the Judgment and Decree dated 22.3.2021, passed by Senior Civil Judge, Kashmore but when they came to know about the impugned judgment he immediately wrote a letter to high officials for seeking permission to file an appeal when permission accorded, the appeal was preferred before this Honourable court."*

The appellate Court, in its Order dated 25.06.2021, has held as under: -

> *"Admittedly, impugned Judgment and decree were passed on 22.03.2021 by learned Senior Civil Judge Kashmore, in F.C. Suit No.140 of 2020, Re. Sunil Kumar Versus P.O Sindh and others and suit of respondent No.1/plaintiff was decreed, whereas the appellant has filed an instant appeal before this Court today, i.e. after the lapse of more than Three Months. The limitation period for filing of a civil appeal is (30) days. The arguments advanced by learned I/C D.A for appellants on point of Limitation are not satisfactory.*
>
> *According to law, section 5 of the Limitation Act has been expressly made applicable to condone the delay in filing of proceedings if sufficient cause is in favour of the party who sought condonation of delay but said Section has not been made applicable on revision. Limitation Act empowers the Court to enlarge the period of Limitation according to particular circumstances of each case, but in the absence of those circumstances, the Court is not competent to condone delay of its own. The law further says the party seeking condonation of delay has to explain each day's delay, which is a condition of precedent, but in the matter in hand, the appellant has failed to satisfy the Court that he had sufficient cause for not to prefer the appeal during the stipulated period. The reason for the delay agitated by the appellant is without any proof.*
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> *In view of the facts and the above discussions, I am of the humble view that the instant civil appeal has been filed with a huge delay of more than Three Months,*

and such delay is without sufficient cause, the instant civil appeal is time bared; same is hereby dismissed in limine. There shall be no order as to costs. However, a number be allotted to instant civil appeal in order to save it in CFMS system."

8. In the above-impugned Order, the appellate Court erroneously held that according to law, Section 5 of the Limitation Act 1908 has expressly made applicable to condone the delay in filing of proceedings if sufficient cause is in favour of the party who sought condonation of delay but said Section had not been made applicable on revision. Despite the fact that the appellate Court was adjudicating the appeal, the application for condonation of delay under Section 5 of the Limitation Act was deemed appropriate. However, no revision application was available to determine whether the aforementioned Section had not been made applicable to revisions. The observation made by the learned Appellate Court is erroneous, whereby flouted the provision of Section 5 of the Limitation Act, 1908, which is fully applicable to appeals, revisions, review of judgment, leave to appeal or any other applications etc. It would be expedient to reproduce Section 5, of the Act 1908 as under:-

*"**5. Extension of period in certain case.**--Any appeal or application for a revision or a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefore, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.*

***Explanation**.---The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section".*

Emphasis is supplied in underlining.

9. Bare reading of the aforesaid provision of law itself shows that the same is fully applicable to both the appeals and revisions. In the Case of ***Masud Ahmad and 2 Others v. United Bank Limited*** ***(1992 SCMR 424)***, it was held by the Apex Court that: *"While section 14 applies to civil suits, section 5 of the Limitation Act is applicable to appeals, applications and review petitions. The grounds which are available for applying section 5 are substantially different. Section 5 caters to different situations which may be covered by the words "sufficient cause". So far as the meaning of "sufficient cause" is concerned it has become well known through judicial pronouncements".*

10. Besides this, the appellate Court has also held that the reason for the delay agitated by the applicants is without any proof. However, upon reviewing the R & Ps of Civil Appeal No. 60 of 2021, as presented in the appellate Court, it was observed that the applicants had included copies of various letters submitted to their respective authorities, seeking permission to initiate the appeal process. The appellate Court failed to consider the reason for the delay, which was expounded upon in the application under Section 5, of the Limitation Act, and neglected to deliberate upon the aforementioned corresponding letters. The Apex Court in the case of ***Mst. Khadija Begum and 2 others vs. Mst. Yasmeen and 4 others*** **(PLD 2001 SC 355)** have enlightened the term "***sufficient cause***" for condoning delay by holding that "*sufficient cause means the "Circumstances beyond the control of the party concerned.*"

11. Upon examination of the impugned Order, it is evident that an appeal was filed on 25.6.2021. Regrettably, the appellate Court summarily dismissed the appeal filed by the applicants on the same day without providing them with a reasonable timeframe for a fair hearing. It is an established legal tenet that the Courts are havens for protecting the rights of individuals who become

litigants before them and are hence obligated to make concerted efforts in fulfilling the statutory responsibility entrusted to them without any shortcomings. They should not hesitate to exercise powers to do real and substantial justice. It is a well-known maxim that "**Justice hurried is Justice buried**". Under principles of justice, addressing the significant rights of all involved parties on their substantive merits is imperative rather than taking a hasty approach to dismiss the matter outright.

12. In the present case, the suit of respondent No.1 was decreed by the trial Court against the applicants/Government functionaries, directing them as under: -

> "*Thus, under such circumstances, it would be in the interest of justice to direct the official defendants to pay the amount of seized/captured wheat crops having a total weighing 65,610 KG as per the current government rate from the government account through Cheque or Bills as prescribed under the law to the plaintiff. In case of failure to pay the amount of seized/captured wheat crops total weighing 65,610 KG as per the current government rate from the government account through Cheque or Bills as prescribed under the law to the plaintiff, the official defendants are directed to release. Hand over seized/captured wheat crops total weighing 65,610 KG as per law to the plaintiff forthwith without fail. Thus, the suit of the plaintiff is decreed to the extent of only prayer clause (i) to (iii) of the plaint accordingly, with no order as to cost.*

13. The above decision has caused immense loss to the public exchequer wherein a colossal quantity of wheat crop weighing 65,610 Kilogram is involved. Thus there is public importance/ interest involved. Thus, in those cases where delays are collusive to avoid dictates of justice and law. Hence, a departmental delay, whenever put forward as grounds for

condoning delay, requires consideration of its merits and is rejected or accepted accordingly, as the case may be.

14. In the case of ***Pakistan Post Office v. Settlement Commissioner*** **(1987 SCMR 1119)**, it was held by the Honourable Apex Court as follows:-

> *"It is necessary to mention here a peculiar feature of Government litigation. No doubt, it was observed in Province of East Pakistan v. Abdul Hamid Dariji, 1970 SCMR 558, that in matter of condonation of delay under section 5 of the Limitation Act, the Government will not be shown extra indulgence than an ordinary litigant, and if so desired only an amendment of law was the way out. The further experience of nearly two decades after that Judgment shows that the inability on the part of the Government to get such an amendment made, has been treated as an accepted and inviolable rule to refuse condonation of delay whenever the plea is raised of departmental delays; which are inherent in the procedures even if culpable negligence is not involved. A just and proper approach which was not prohibited by the rule in Abdul Hamid Darji's case, is to treat the request for condonation on its own merits like that of any other litigant; and not to shut out the plea on simple formula that it is mere departmental delay negligence; because the decision itself, does not lay down such an inflexible rule. The facts of that case and the condition that each case is to be seen on its own circumstances, cannot at all be ignored. It is well-known that indiscriminate application of this decision has caused immense loss to the public exchequer wherein an innocent third party, namely, the tax-payer in ultimate analysis, suffers the loss. This is besides those cases where delays are collusive so as to avoid dictates of justice and law. Hence, a departmental delay whenever put forward as a ground for condonation of delay requires*

consideration on its merits and rejected or accepted accordingly, as the case may be".

15. In the case of ***Deputy Collector of Customs v. Muhammad Tahir*** **(PLD 1989 SC 627)**, the Hon'ble August Court has held as follows: -

"It has recently been held by this Court that the petitions on behalf of the Government or Government functionaries in matters involving Government interest or public interest, the petitioners no doubt would be treated at par with ordinary citizen; but they would be given the same concessions and considerations as given to the other citizens. It has also to be observed that while examining the merits of the application for condonation of delay, the Court can look into the conduct of the subordinate functionaries, on whose conduct the higher policy-maker functionaries have only a remote physical control. Hence, the conduct of the lower functionaries can, in appropriate cases, be taken as a good ground for condonation of delay. In this case, prima facie, some of the lower functionaries, as explained in the application, seem to have misconducted in the matter of vigilance and preparation for the filing of a petition for leave to appeal. And further, as admitted at the Bar, departmental action is being taken against them in this behalf. This, amongst others, shows bona fides on Government's part. We consider it a fit one for condonation of delay. Accordingly, the application on that behalf is allowed, and the delay is condoned.

On merits, there is not much opposition from the caveator. The case involves very valuable property over crores of rupees, and the questions raised in support of the petition are also of public importance. Learned counsel for the caveator on this behalf agitated that the respondent side has suffered due to a long delay. Therefore, this case needs expeditious finalization.

Keeping in view the interest of the petitioners, respondents and also the public interest, we consider it a fit case for grant of leave to appeal."

16. Based on the aforementioned reasons, it can safely be inferred that the applicants have successfully established, prima facie, the appellate Court has committed material irregularity and illegality by abruptly dismissing the appeal as time-barred without adequate consideration and discussion of the aforementioned application, submitted under Section 5 of the Limitation Act for the condonation of delay in filing appeal. Similarly, the documents annexed with the memo of Civil Appeal were not accorded adequate attention. Thus, this civil revision application is allowed. Consequently, the impugned Order passed by the learned appellate Court is set aside, and the case/ appeal is remanded back to the appellate Court with the direction to decide the application under Section 5 of the Limitation Act on merits after considering its grounds as well as documents stated supra in accordance with the law after providing appropriate opportunity of hearing to both the parties. Parties are left to bear their costs.

J U D G E