

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
R.A No. 72 of 2012

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. *For katcha peshi.*
2. *For hearing of CMA-375/2012*

05.12.2016.

None present for the Applicants.
Mr. Rafique Ahmed, Advocate for Respondents No.10 to 20.

ORDER

MUHAMMAD FAISAL KAMAL ALAM, J:-

Applicant is

present in person and submits that his Counsel is not well. The short controversy is involved in the matter, which after filing of the inquiry report having Ref.No.1st/Hyd/1106/2013 dated 27.03.2013, is further narrowed down. Through instant revision application, the present Applicants have called in question the order dated 27.02.2012, passed by the learned Appellate Court (VIIth Additional District Judge, Hyderabad), whereby, the Civil Appeal No.28 of 2016, filed by the present Applicants, was dismissed being time barred. Earlier the F.C. Suit No.43 of 1994 instituted by the present Applicants/Plaintiffs against the Respondents / Defendants was also dismissed by the learned Trial Court (1st Senior Civil Judge, Hyderabad) by its judgment and decree dated 24.08.2010 and 31.08.2010 respectively.

2. Relevant facts for deciding the instant revision application are that earlier the present Applicants have instituted a

suit in respect of a property, viz. House No.D/52-2290/2 and according to the Applicants the same was partly owned by them being the Evacuee Property. The suit was contested by the present Respondents and particularly private Respondents, who are represented by their Counsel Mr. Rafique Ahmed. Issues were framed by the learned Trial Court and after discussing the evidence, the above mentioned impugned judgment and decree were pronounced.

3. While the above mentioned Civil Appeal was pending, an application was filed, seeking rejection of the appeal being time barred. The learned Appellate Court after considering the arguments of both the sides has decided in favour of the present private Respondents.

4. While the matter was pending in this Court, it was deemed proper that controversy should also be minutely examined by holding an inquiry in this regard. Order of 20.02.2013 is of relevance. Subsequently, an Inquiry Report was submitted in this Court, which is available at Page-1 of the R&P and perusal whereof shows that all the parties to the present proceeding alongwith their Counsel were heard and examined, so also the Court record, while handing down the findings that infact the certified copy was received by the present Applicants on 28.09.2010. However, the contention of the present Applicants is that they have received a certified copy on 12.01.2011 and therefore Civil Appeal was filed within prescribed time of thirty

days. This factual aspect has been aptly dealt with in the Inquiry Report, wherein it has been mentioned in detail, *inter alia*, that a certified true copy was not obtained on 12.01.2011 but on the above date; 28.09.2010.

5. In the impugned order, a detailed discussion has been made with regard to the contention of both the parties and after taking into consideration the record and examining the same visually, the Appellate Court came to the conclusion that the above mentioned Civil Appeal has been filed 90 days after delivery of certified copy of the judgment and decree sought to be challenged, instead of filing the same within thirty days, as per the Limitation Act (1908), and hence the same was dismissed. It is well settled rule by now that a person who challenges the decision, in the instant case, the present Applicants, are required to justify the delay of each day, and if the Appellate Court is of the view that the delay is justified, then the same is condoned, even if delay runs into months but where a person/litigant cannot justify the delay, then the delay of even couple of days is not condoned. So much so, even the government functionaries are also placed in the same position. In a recent judgment of the Hon'ble Supreme Court reported as *PLD 2015 Supreme Court Page-212 (Dr. Muhammad Javaid V/s. Syed Rashid Arshad & Others)*, it was held that when issue of limitation is raised, the same should be addressed first, as the Law of Limitation is a substantive one and not merely a procedural legislation. The vested rights accrue to a party in the

intervening period when a time barred proceeding is filed by the opposite party, then such vested rights cannot be diluted or brushed aside by condoning the delay as a formality.

6. In view of the above discussion as well as taking into consideration the above Inquiry Report, I do not find any material irregularity in the impugned order, which has been passed by application of judicial mind, therefore, it does not warrant any interference in this revisional jurisdiction and consequently this revision application is dismissed. Parties to bear their own costs.

JUDGE

Shahid