

IN THE HIGH COURT OF SINDH, KARACHI
HCA No.201 of 2017

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Present:

Mr. Justice Irfan Saadat Khan
Justice Mrs. Kausar Sultana Hussain

M/s. Fazal-e-Rabbi Group
Companies Appellant : through Mr. Muhammad Tarique
Siddiqui, Advocate.

..Vs..

M/s. KLM Royal Dutch Airlines
Respondent : through Dr. Adeel Abid,& M.
Junaid Khatri, Advocates.

Date of hearing : 05.04.2023

Date of decision : 07.04.2023

JUDGEMENT

IRFAN SAADAT KHAN, J. This High Court Appeal has been filed impugning the order dated 09.02.2017 passed in Suit No.615/2006. Since the matter was time barred, the counsel for the Appellant was directed to proceed with the limitation application first.

2. Mr. Muhammad Tarique Siddiqui, Advocate has appeared on behalf of the Appellant and stated that after obtaining the copy of the impugned order he fell seriously ill and went for his medical checkup and the doctor thereafter diagnosed stone in his kidney. He in this regard has attached MRI and hospital reports to show his health condition. He therefore, prays that delay in filing the appeal may be condoned.

3. Counsel appearing for the Respondent has no objection for grant of this application in condoning the delay, however prays that the counsel appearing for the Appellant may be directed to proceed with the matter on merits.

4. We, therefore under the circumstances condone the delay caused in filing the appeal due to the health condition of the Appellant and will dispose of the case on merits.

5. Mr. Muhammad Tarique Siddiqui, counsel for the Appellant submitted that the learned Single Judge was not justified in dismissing the suit for want of evidence, as in his view proper opportunity of hearing was not provided to the appellant. He therefore, states that the matter may be remanded to the learned Single Judge for passing a fresh order on merits.

6. Dr. Adeel Abid, Advocate has appeared on behalf of the Respondent and stated that it is evident from the order that the Commissioner appointed in the suit granted as many as 20 chances from 25.01.2014 to 07.05.2016 to the plaintiff's witness for recording of the evidence, however the same was not done. He stated that in the circumstances the learned Single Judge was left with no option but to dismiss the matter for want of evidence. He therefore, stated that there is nothing wrong in the order, which may therefore, be upheld.

7. Briefly stated the facts are that a suit for damages was filed by the present appellant against the Respondent on the ground of some business differences between the plaintiff in the suit and the

defendant and it was a claim in the suit that due to indifferent attitude of the defendant a decree of Rs.100 Million alongwith profit / markup may be granted. The suit proceeded and thereafter at the request of the applicant Commissioner was appointed to record the evidence of the witnesses. However it has come on the record that despite giving various chances by the said Commissioner, the plaintiff in the suit had made no effort to get the evidence recorded of the witnesses before the Commissioner and as a result thereof the Commissioner returned the commission as un-executed and the order dated 22.9.2014 for appointing the Commissioner for recording of the evidence was recalled. The learned Single Judge in these circumstances, in our view, was left with no option but to dismiss the suit for want of evidence, as not only the plaintiff in the suit has failed to get recorded evidence of his witnesses before the Commissioner. Though it was averred that the then counsel appearing in the matter was not well, however this assertion of the learned counsel in our view is misplaced as if the then counsel of the plaintiff in the suit was unwell the appellant could have made some arrangement by appointing some other person or making any other arrangement, which was not done and the same is apparent from the record.

8. The record clearly reveals that for almost two years the Commissioner called the witness for examination but the appellant has miserably failed to do so with the result that the Commissioner returned the commission. It is also a matter of record that a review application was filed by the Appellant before the learned Single Judge in respect of the order dated 09.02.2017, which too was

dismissed on the ground that the parties are bound by the acts and omission of their counsel.

9. We therefore, under the circumstances do not find any illegality or infirmity in the order passed by the learned Single Judge, which is hereby upheld. The Appeal is found to be devoid of any merit, the same therefore stands dismissed.

JUDGE

JUDGE

Karachi
Dated:07.04.2023

SM