

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Jawad Akbar Sarwana

High Court Appeal No.463 of 2018

Karachi Development Authority

Versus

Lal Muhammad Brohi through L.Rs. and others

.....

Date of hearing: 14.11.2023

Mr. Rasool Bux Qureshi, Advocate for the appellant along with Mr. Javed Ali Sangi, Advocate.

Mr. Akhtar Hussain, Advocate for Respondents Nos.1 & 5 along with Mr. Ameeruddin, Advocate.

.....

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This appeal is arising out of a judgment dated 10.08.2018 and decree dated 03.09.2018 against which the appellant/Karachi Development Authority [KDA] has preferred this appeal.

2. At the very outset, Mr. Akhtar Hussain, learned counsel for Respondents No.1 and 5 has challenged the maintainability of this appeal on the touchstone of it being barred by time.

3. We have heard learned counsel for the parties and perused the material available on record.

4. The judgment was passed on 10.08.2018, whereas, the decree was signed on 03.09.2018. A common application to obtain certified copy of the judgment and decree was filed on 31.08.2018. It took the copying branch some time to estimate the cost which was estimated on 27.10.2018. While appeal could not have been preferred without a decree, though an application to obtain certified copy of both (judgment & decree) was filed on 31.08.2018. The decree since was prepared on 03.09.2018, it was delivered to them (appellant) on

27.10.2018. The appeal was presented on 13.11.2018. The calculation shows that since copy of judgment & decree was delivered on 27.10.2018, it ought to have been filed in 15 days on receipt of judgment & decree i.e by 10.11.2018 appeal should have been filed but it was presented on 13.11.2018 without court fee, even if the time that was consumed after obtaining certified copy of the judgment is ignored as the judgment was passed on 10.08.2018, whereas, the application itself was filed on 31.08.2018. While this is not enough, the record further shows that the court fee was not filed along with the main appeal when it was presented. The court fee was then submitted on 26.11.2018.

5. Mr. Akhtar Hussain, learned counsel for Respondents No.1 & 5 appeared on 06.10.2021, perhaps on statutory notice, whereas, new Advocate Mr. Mubarak Ali undertook to file vakalatnama on behalf of the appellant and time was granted to prepare the brief. On 02.11.2021 the appellant was not in attendance and someone held his brief. It was pointed out to the court that the appeal is time barred and the court cautioned that no further adjournment shall be granted. Again on 19.11.2021 the court noticed a preliminary objection that the appeal was barred by time. The appellant continued to seek adjournments and the court continued to caution the appellant. On 21.03.2022, 12.04.2022, 10.05.2022, 17.05.2022, 11.08.2022 and 14.09.2022 the appellant continued to seek adjournments for one reason or the other. The court fee filed, was taken on record on 20.10.2023 "subject to all just legal exceptions", that concludes that the time of filing this appeal is to be reckoned from the date of filing of the court fee and that is 26.11.2018. Although the appeal is otherwise time barred, had court fee be affixed with the appeal, it's belated attempt has further made the case more miserable as the time that was consumed in filing the court fee will

also be added as the time consumed in filing the appeal, thus the appeal is barred by time.

6. In view of the above, the instant appeal being barred by time was dismissed by a short order dated 14.11.2023 and these are the reasons for the same.

Dated:-16.11.2023

JUDGE

JUDGE

Ayaz Gul