

IN THE HIGH COURT OF SINDH AT HYDERABAD

Ilnd No.S-84 of 2023 : Dilber Khan & Others Vs. KarimBux & Others.
For the appellant : Mr. Mazhar Ali Laghari, Advocate
Date/s of hearing : 22.11.2023.
Date of announcement : 22.11.2023.

ORDER

Agha Faisal, J. The Appellant had filed F.C.Suit No.215 of 2019 before learned Senior Civil Judge-1 Sanghar and same was dismissed vide judgment dated 14.01.2023; *inter alia* on the premise that no cause of action could be demonstrated.

Civil Appeal 20 of 2023 was filed before learned Ilnd Additional District Judge/MCAC Sanghar and same was dismissed vide judgment dated 08.7.2023; *inter alia* on account of being time barred. The relevant observations are reproduced herein below:

“Reverting to the point of limitation, admittedly the appellant did not supply the Court Fee Stamps as per valuation with the appeal. He filed an application U/S 149 C.P.C with appeal which was allowed and 10 days’ time was granted but appellants failed to comply with said order. After more than three months, at the time of final argument, appellant submitted Court Fee along with statement without disclosing any reason and ground for such delay. In the Similar situation in an un-reported order dated 11.08.2014, passed in Civil Revision No.52 of 2014 Re-Market Committee Shikarpur and others Vs. Agha Shafi Muhammad Khan and others, Honourable High Court of Sindh, Circuit Court Larkana has held as under:

“ Respondents have filed suit for restoration of possession and compensation against the appellants. The suit was decreed in terms of judgment dated 19.05.2011 and decree was passed on 25.05.2011. Aggrieved with judgment and decree the applicant preferred an appeal bearing Civil Appeal No.14 of 2011. However, the record reflects no Court Fee at the time of filing of appeal was affixed. The judgment of the 2nd Additional District Judge, Shikarpur passed in Civil Appeal No.14 of 2011 reflect that the Court Fee before the appellate Court was deposited on 15.03.2014 without any application under section 149 CPC. Thus no ground was established before the appellate court forum for such delay in affixing court fees. The record also shows that he has also affixed court fee but that was subject to all just exceptions. The court fee appears to have been filed after the delay of 02 years and 09 months and hence the appellate court held that since the prescribed period for filing of appeal was 30 days therefore, appeal was hopelessly barred by time.

Learned counsel for the applicants insisted to consider the merits of the case. However, such merits was not heard by the appellate court since the appeal was held to be hopelessly barred by time and on this ground alone the appeal was dismissed. No cogent reasons were provided even at this stage as to why such delay was caused. In view of the above, I do not intend to interfere with the findings of the appellate court which has held the appeal to be hopelessly barred by time. Hence this revision application fails...”

In another identical case law Re:Qazi Muhammad Ilyas and 7 others Versus Qazi Muhammad Raees and 3 others reported in 2014 CLC 160 (Sindh), the Honourable High Court has held as under:-

“Ss. 96, 107, 115 & 149...Filing of first appeal without court-fee---along with application under S.149, CPC made at time of arguments---Order of appellate Court allowing appellant to pay Court-fee---validity---Time for payment of Court-Fee could be extended under S.149, CPC before expiry of period of limitation prescribed for filing an appeal, but not thereafter---Delay in filing appeal or payment of court-fee could not be condoned under S.149, CPC after expiry of prescribed period of limitation---Payment of court fees beyond period of limitation prescribed for filing an appeal would render appeal itself as time barred---Appellate Court had allowed appellant to pay court-fee when his appeal was barred by limitation---High Court accepted revision petition and set aside impugned order in circumstances.”

Obviously, in view of above facts and case law, this appeal cannot be considered as filed within limitation, and a valuable right of limitation has accrued to respondents.

As a result of above discussion not only the impugned Judgment and Decree passed by learned Trial court being legal and based upon proper appreciation of evidence do not require any interference of this Court, but also the appeal is not maintainable being time barred, therefore, point under discussion is answered in negative.

Learned counsel submits that appellant does not controvert the delay, however, since the same was merely ten days, hence, it ought to have been condoned. It is contended that since valuable rights were involved, therefore, the appellant could not be non-suited mere on technicalities.

Heard and perused. The primary issue agitated before this Court is that of limitation and it is contended that the same could not be enforced in place of adjudication on merit. The delay has been adequately particularized in the appellate judgment. Learned counsel articulated no cavil to the narration of delay and remained unable to dispel the preponderant record / dates relied upon to render the findings of being time barred.

It is settled law that failure to pay court fee within the limitation period and / or seeking an extension in terms thereof within the period of limitation would render the appeal itself as time barred.¹ Admittedly, the applicant did not deposit the court fee within the period of limitation, hence, the dismissal of the appeal. No infirmity in respect of such finding could be identified before this court.

It is the considered opinion of the Court that the prescriptions of limitation are not mere technicalities and disregard thereof would render entire law of limitation otiose². The Superior Courts have consistently maintained that it is incumbent upon the Courts to first determine whether the proceedings filed there before were within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard³. The Superior Courts have held that proceedings barred by even a day could be dismissed⁴; once time begins to run, it runs continuously⁵; a bar of limitation creates vested rights in favour of the other party⁶; if a matter was time barred then it is to be dismissed without touching upon merits⁷; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance⁸. It has been maintained by the honorable Supreme Court⁹ that each day of delay had to be explained in an application seeking condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed. It is pertinent to observe that the preponderant bar of limitation could not be dispelled by the appellant before the relevant court and no case has been set forth herein to suggest any infirmity in the findings rendered in such regard.

Be that as it may, a second appeal may only lie if a decision is demonstrated to be contrary to the law; a decision having been failed to determine some material issues; and / or a substantial error in the procedure is pointed out. It is categorically observed that none of the aforesaid ingredients have been identified by the learned counsel. In such regard it is also important to advert to section 101 of CPC, which provides that no appeal shall lie except on the grounds mentioned in the Section 100 of CPC. While this Court is cognizant of Order XLI Rule 31 CPC, yet at this stage no case has been set forthwith to entertain the present appeal in view of the reasoning stated above. As a consequence hereof, in *mutatis mutandis* application of Order XLI Rule 11 C.P.C, this appeal is hereby dismissed *in limine* along with pending application. The office is directed to communicate a copy hereof to the appellate court.

Judge

¹ 2014 CLC 160; 2020 CLC 33; 2009 CLC 262; 1997 SCMR 262; PLD 1981 SC 489; PLD 1979 SC 821; 1979 SCMR 243.

² *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as 2019 MLD 249.

³ *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

⁴ 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

⁵ *Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

⁶ *Dr. Anwar Ali Sahito vs. Pakistan* reported as 2002 PLC CS 526; *DPO vs. Punjab Labour Tribunal* reported as NLR 1987 Labour 212.

⁷ *Muhammad Tufail Danish vs. Deputy Director FIA* reported as 1991 SCMR 1841; *Mirza Muhammad Saeed vs. Shahabudin* reported as PLD 1983 SC 385; *Ch Muhammad Sharif vs. Muhammad Ali Khan* reported as 1975 SCMR 259.

⁸ *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

⁹ *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821; *Qamar Jahan vs. United Liner Agencies* reported as 2004 PLC 155.