

THE HIGH COURT OF SINDH KARACHI

Present:

Mr. Justice Zafar Ahmed Rajput &
Mr. Justice Adnan Iqbal Chaudhry.

1st Appeal No. 147 of 2024
[Muhammad Irfan Akram v. Adil Razzaque]

Appellant : Muhammad Irfan Akram through Mr.
Wali Muhammad, Advocate.
Date of hearing & short order : 05-12-2024
Date of reasons : 09-01-2025

JUDGMENT

Adnan Iqbal Chaudhry J. - This appeal was dismissed by us in *limine* by a short order dated 05-12-2024. Reasons for the dismissal follow.

2. The appeal emanates as follows. Summary Suit No. 162/2019 by the Respondent against the Appellant was decreed by the Additional District Judge on 30-04-2021 on *ex-parte* proof when the Appellant did not appear to seek leave to defend. After 3 months or so, the Appellant made an application to set-aside the decree under Order XXXVII Rule 4 CPC, but then did not proceed with the application which was eventually dismissed for non-prosecution on 28-03-2023. After 5 months or so, the Appellant made an application to re-call the order dated 28-03-2023, which too was dismissed by order dated 16-05-2024. Against that, the Appellant has preferred this appeal after 180 days, which is time-barred by 90 days. By CMA No. 3042/2024 under section 5 of the Limitation Act, 1908, the Appellant prays for condoning such delay.

3. The ground taken for condoning the delay is that in the month of October 2024, the Appellant's counsel had fallen ill and had to undergo surgery; therefore, the appeal could not be filed within limitation; and that it was filed as soon as the counsel recovered from

surgery. However, the hospital's discharge card filed in support of the application reflects that the counsel was admitted to hospital on 11-10-2024 for treatment of pilonidal sinus and was discharged the next day on 12-10-2024. The appeal was already time-barred when the counsel was admitted to hospital. Therefore, the ground that the delay was due to counsel's surgery, is clearly an afterthought, which also does not explain the delay of 90 days. In any case, even if his counsel was unwell, the Appellant does not explain what prevented him from making alternate arrangements for filing the appeal within time.

5. In view of the foregoing, CMA No. 3042/2024 does not disclose a sufficient cause for condoning delay under section 5 of the Limitation Act, 1908. The application is therefore dismissed. Resultantly the appeal stands dismissed.

JUDGE

JUDGE

*SHABAN**