

163

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Civil Revn. Appln. No.S-13 of 2013

| | |
|-----------------|-------------------------------|
| DATE OF HEARING | ORDER WITH SIGNATURE OF JUDGE |
|-----------------|-------------------------------|

05.12.2016.

1. For orders on office objections.
2. For Katcha Peshi.
3. For hearing of C.M.A. No.39/2013.

Mr. Imdad Ali Mashori, advocate for the applicant.

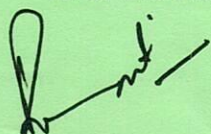
Mr. Rabnawaz Soomro, advocate for respondent No.1.

Mr. Ameer Ahmed Narejo, State Counsel.

This Civil Revision Application is directed against the order dated 11.2.2013 passed in Civil Appeal No.44/2005, whereby an application filed by the applicant/respondent No.1-A under Section 3 of the Limitation Act, 1908 (hereinafter referred to as the "Act") was dismissed by the learned Additional District Judge, Shahdadkot, holding the Civil Appeal, filed by the respondent No.1/appellant, within time.

Learned Counsel for the applicant submits that Civil Appeal bearing No.53/2003 (District Larkana) and No.44/2005 (District Kamber-Shahdadkot) filed by the respondent against the judgment and decree dated 07.01.2003 and 09.01.2003, respectively passed by the learned III-Senior Civil Judge, Larkana in F.C. Suit No.34/2002 was time barred by two days, therefore, the same should have been dismissed by the learned appellate Court in *limine* in accordance with law being not maintainable; however, when the same was not done, the applicant moved an application under Section 3 of the Limitation Act but the same was dismissed by the appellate Court, therefore, instant civil revision application has been maintained.

On the other hand, learned Counsel for the respondent has vehemently opposed this civil revision by submitting that the appeal was preferred by the respondent on 29th day keeping in view the provision of Section 12 of the Act, hence the same is maintainable under the law.



1591

Learned State Counsel also adopts the arguments of learned Counsel for the respondent.

Perusal of record shows that judgment impugned in Civil Appeal was passed by the learned trial Court on 07.1.2003 in Civil Suit No.34/2002 while the decree was drawn on 09.1.2003. Under Section 96 of C.P.C, an appeal lies from an original decree to the Court of District Judge and Article 152 of the Act provides a period of 30 days commencing from the date of the decree. In the instant case, as per the endorsement of record keeper, who issued certified copies of the judgment and decree, the application for certified copies of the judgment and decree was filed by the respondent on 28.1.2003 (after 18 days of the impugned decree), which were prepared and delivered to respondent No.1 on 06.2.2003, and thereafter the said respondent filed civil appeal on 17.2.2003 (after 10 days of obtaining certified copies), hence the appeal was filed on 29th day. It may be relevant to mention here that in computing the period of limitation one should take the date of delivery of the decree or order, as the case may be, as the starting point, and the date of presentation of the appeal as the final point and then added to the period fixed by the relevant article of the Act. The allowance to which the appellant is entitled under relevant section is so provided under Section 12 of the Limitation Act. In this matter, the date on which the respondent No.1 applied for obtaining certified true copies of the judgment and decree i.e. 28.1.2003 and the date on which the appeal was presented i.e. 17.2.2003 are also liable to be excluded from the period, hence 28 days appear to have been consumed and the appeal was presented on 29th day, which is well within time. This civil revision application, therefore, being devoid of merit is dismissed accordingly alongwith listed application, with no order as to costs.


JUDGE