

(145)

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Civil Revision Application No. S-66 of 2014

SSGCL (Sui Southern Gas Company Limited) and others
v/s.
Muhammad Ayub Khoso

Mr. Bashir Ahmed Dargahi, Advocate for the Applicants.

Mr. Tariq Ali Rind, Advocate for the Respondent.

Date of Hearing: 01.10.2020

Date of Order: 01.10.2020
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**ORDER**

**Muhammad Junaid Ghaffar, J.:** This Civil Revision Application, is directed against Order dated 30.04.2014, passed in Civil Appeal No.01 of 2014 by 2<sup>nd</sup> Additional District Judge, Shikarpur, whereby, the Appeal against Judgment and Decree dated 30.11.2013 and 06.12.2013 respectively in F.C.Suit No.69 of 2005 passed by Senior Civil Judge, Shikarpur, decreeing the Suit of Respondent, has been dismissed as being time barred.

2. Learned Counsel for the Applicants submits that though the Appeal was presented without Court Fee; but with a Statement and undertaking to deposit the same within fifteen days, which was granted; that thereafter the Court Fee was deposited on 18.03.2014, as the Appeal was admitted on 21.01.2014 and no directions were given to deposit the Court Fee; that subsequently an application Under Order 7 Rule 11 C.P.C. was filed by the respondent and the same has been allowed by dismissing the Appeal being time barred; that huge public money is involved as the Applicant is a State enterprise, whereas one mandatory chance to deposit the Court Fee was never granted. In support of his contention, he has relied upon the case reported as 1994 SCMR 1756 (*Haji Mohyuddin and others v/s. Sher Bahadur Khan and*

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others), 1988 SCMR 87 (Siddiq and others v/s. The Deputy Commissioner, East Karachi and another), 2005 SCMR 1933 (Noor through L.Rs v/s. Ahmad and others), 2007 CLC 532 (Muhammad Shaukat and others v/s. Haji Ghulam Muhammad and others) and 1990 SCMR 1638 (Malik Allah Dad deceased through his legal representatives and others v/s. Yasin and another).

3. On the other hand, learned Counsel for the respondent has opposed this Civil Revision Application and submits that the Applicants were granted sufficient time to deposit the Court Fee, but failed to do so and therefore, the Appeal was rightly dismissed; that Section 28 of the Court Fee Act has also been violated, whereas the first opportunity given on the statement was enough and fulfilled the requirement of law; hence no case for indulgence is made out. In support of his contention, he has relied upon the case law reported as 2015 SCMR 380 (United Bank Limited and others v/s. Noor-un-Nisa and others).

4. I have heard both the learned Counsel and perused the record. It is an admitted position that the Suit filed by the respondent was decreed by the Trial Court vide Judgment dated 30.11.2013 against which the Applicant preferred Civil Appeal No.01 of 2014 and at the time of filing of the Appeal Court Fee was not paid and an undertaking was given through a statement, on which an order was passed on 07.01.2014, granting time to the Applicants for deposit of Court Fee till next date of hearing i.e. 21.01.2014. On 21.01.2014, some orders were passed, but despite directions of this Court both learned Counsel have not been able to place the same on record as according to them the file is not traceable before the Appellate Court. However, the case diaries of relevant dates have been filed along with this Civil Revision Application and read as under:

07.01.2014.

Today Civil Appeal is received by way transfer from Honourable D.J. Shikarpur. Order on it. Advocate to be heard. Put off to. 21.01.2014.

21.1.2014.

**Matter called. Advocate for the Appellant is present. Heard arguments on the Admission. Detail order passed on it. Appeal is admitted, registered, subject to legal objection if any. Issue process on cost, through Bailiff, registered Post A.D. Put off to 6.2.2014 for service.**

6.2.2014.

Matter called. Advocate for the appellant is present. Process against respondents, returned served upon the respondent. Respondent is present and filed application U/S 17 R 11 C.P.C. Order on it. Put off to 22.2.2014 for Arguments. P.O. E/Leave. R & Ps is received from lower court and kept on record.

22.2.2014.

Matter called. Advocate for the appellant is called absent. Today Mr. Dev Dass advocate has filed power on behalf of respondent and application U/O 7 Rule 11 C.P.C. Order on it. Put off to 18.3.2014 for Arguments and hearing on application. P.O is on C/Leave.

18.3.2014.

Matter called. Advocate for the appellant is present and filed statement alongwith Stamp paper of Rs.6100/-. Order on it be placed with memo of Appeal. Copy of Application U/O 7 Rule 11 C.P.C supplied to advocate for the appellant. Put off to 25.3.2014 for hearing on application and argument.

25.3.2014

Matter called. Advocate for the appellant is present and filed objection on application U/O 7 Rule 11 C.P.C. Order on it. Notice to other side. Advocate for the respondent is Put off to 7.4.2014 for hearing on application U/O 7 Rule 11 C.P.C.

07.4.2014.

Matter called. Advocate for the both parties are present. Heard arguments on application U/O 7 Rule 11 C.P.C. Put off to 24.4.2014 for order on application U/O 7 Rule 11 C.P.C.

24.4.2014

Matter called. Advocate for both parties are present. P.O is busy at C.J. Larkana. Put off to 29.4.2014 for orders on application U/O 7 Rule 11 C.P.C.

29.4.2014.

Matter called. Advocates for both parties are present. Order passed and announced in open court. Civil Appeal is hereby dismissed being time barred and impugned judgment and decree are maintained. Copy of order and R. & Ps. returned back to lower court for compliance."

Perusal of the aforesaid diary sheet(s) reflect that the arguments were heard on 21.01.2014 on admission of the Appeal and a detailed order was passed, but unfortunately the same is not available before this Court. It further reflects that the Appeal was admitted, registered and subject to legal exceptions, if any, notice was ordered. It further appears that thereafter on 06.02.2014, an application under Order 7 Rule 11 C.P.C. was filed and subsequently on 18.03.2014, the

statement along with stamp paper of Rs.6100/- as Court Fee was placed on record and copy of application Under Order 7 Rule 11 C.P.C. was supplied to the Applicants' Counsel. Finally, the impugned order has been passed. Perusal of the aforesaid diary sheets and the record placed before this Court reflects that insofar as the requirement of law as contemplated in Order 7 Rule 11 C.P.C. in respect of rejection of plaint on non-deposit of Court Fee is concerned, the same has not been followed by the Appellate Court. The earlier grant of time on 7.1.2014 on the statement of the Appellant (which again has not been placed before the Court by any of the parties) cannot be equated with compliance of the provisions of Order 7 Rule 11 (b) and (c); but only an order, at the most, under section 149 CPC. Law as settled by the Hon'ble Supreme Court of Pakistan requires that before rejection of plaint while exercising powers under Order & Rule 11 CPC, one mandatory chance is to be provided to the delinquent party for making good the deficiency of the Court Fee. It has been further held that if such chance is availed and the Court Fee is deposited then the plaint or the memorandum of Appeal shall be deemed to have been validly filed on the date of the original presentation notwithstanding the fact that the Court Fee was supplied after expiry of the period of limitation. The only exception is that if the party is guilty of contumacy and commits positive act of malafide, he could be disentitled for further exercise of discretion under section 149 read with section 148 C.P.C. In this matter though on the statement of the Applicants certain time was granted, but notwithstanding, the Appeal was thereafter admitted; however, subject to legal exceptions, if any, and therefore it was mandatory upon the Appellate Court to give a final chance to the Applicants after filing of the application under Order 7 Rule 11 C.P.C. This exercise was never carried out and again notwithstanding and before passing of the impugned order the Court Fee was accepted, whereas, the Appeal was already admitted and even then it has been held to be time barred on the ground that the Court Fee was deposited after limitation had expired.

5. The Hon'ble Supreme Court of Pakistan in the case reported as ***Siddique Khan and 2 others v/s. Abdul Shakur Khan and 2 others (PLD 1984 SC 289)***, a Full Bench judgment, speaking through Mr.



Muhammad Afzul Zullah, J; has elaborately discussed this issue after going through and scanning the entire case law available at that point of time in the subcontinent. It is a very detailed Judgment; however, observations at pages 315 and 320 are relevant for the present purposes and read as under:

**Pg: 315 (T & U)**

One more conclusion that can be drawn from the foregoing discussion is that the failure to supply proper court-fee in the context of the Court Fees Act and section 149 and Order VII, rule 11 (c) can at best be equated with non-prosecution and not with non-institution or presentation of the matter/and document nor with the bar of Limitation. Accordingly, considerations in that behalf for exercise of discretion under sections 148 and 149 and the relevant provisions of Court Fees Act should be different from those under section 5 of the Limitation Act, which in any case does not apply to the Suits. To apply the latter to the former cannot be justified on any rule of interpretation. This is what was thought as the proper approach by the Lahore Full Bench in the case of Jagat Ram (1938) when discovering the meaning of bona fides from the General Clauses Act rather than applying the Limitation Act. In the light of these additional reasons on this subject the rule laid by this Court in the cases of Mst. Parveen (1983) and Shahna (1983) is re-affirmed. For all these reasons it is accordingly held that when considering the options for exercise of discretion for grant of time for supply of deficiency in the court-fee, considerations relevant to bar of limitation shall not be taken into account.

**Pg: 320 (AA & BB)**

The combined effect of the rule laid down by this Court in the cases of Muhammad Nawaz Khan and Shah Nawaz would thus be that in cases of deficient court-fee which would include in the context of now amended law, certain exemptions in this behalf, the Court on discovery of an omission/error in valuation of deficiency in court-fee, shall acting under Order VII, rule 11(b) and (c) allow time to the plaintiff to make correction and supply the deficiency. If he does so then the plaint shall be deemed to have been validly filed on the date of the original presentation notwithstanding the fact that the court-fee was supplied after the expiry of the period of limitation. If, however the plaintiff is guilty of contumacy which terms would be separately explained hereinafter and/or he commits positive act of mala fides the plaintiff could be held disentitled to further exercise of discretion under section 149 read with section 148 of C.P.C.

Contumacy in the context is used in the general dictionary sense and not as a word of art. It means contempt of lawful authority, obstinacy, or stubbornness. It is not difficult to discover the connection of these attitudes with the subject under discussion. If a plaintiff is allowed time to supply the deficiency in court-fee under Order VII, rule 11 (c) as a matter of course and obligation (because, the rejection of plaint cannot take place without doing so) then in case he fails to do so, and asks for more time without some justification, it would amount to his being obstinate and stubborn in ignoring or defying the requirement and authority of law. The repetition of such a conduct would amount to contumacy. Similar interpretation of this word in *Sohara v. Rashid Ahmad (1)* by Aftab Hussain, J., as he then was, is approved."



6. In view of hereinabove facts and circumstances and the law settled by the Hon'ble Supreme Court, I am of the view that the Appellate Court has seriously erred in law and facts by dismissing the Appeal of the Applicants as being time barred and therefore, the impugned Judgment/Order dated 30.04.2014 is hereby set aside; the Appeal shall be deemed to be within time and pending; the Appellate Court is directed to decide the Appeal on merits preferably within a maximum period of 90 days from the date of receipt of this order.

7. This Civil Revision Application stands allowed in the above terms.

  
Judge

Manzoor