

125

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Civil Revision No.S-12 of 2015.

Date of hearing	Order with signature of Judge
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Fresh Case.

1. For orders on office objection at flag A.
2. For hearing of main case.

08.09.2017.

Mr. Abdul Sattar Janwri Advocate for the applicant.

MUHAMMAD JUNAID GHAFFAR J:- Through this Civil Revision the applicant has impugned order cum judgment dated 21.1.2015 passed by 2nd Additional District Judge, Mehar in Civil Appeal No.44 of 2014 through which the appeal filed by the applicant has been dismissed as being time barred.

2. Learned counsel for the applicant was at the very outset confronted as to how instant revision can be entertained within the purview of section 115 CPC as apparently there appears to be no irregularity or lack of jurisdiction in the impugned order. The learned counsel could not satisfactorily respond however, he submits that initially Civil Appeal No.09 of 2012 was filed by the applicant against judgment and decree dated 19.12.2011, however, the said appeal was withdrawn on 18.3.2014 and permission was sought to file a fresh which was granted and therefore, the appellate court has erred in dismissing the second and subsequent appeal as being time barred, hence instant revision is maintained.

3. I have heard the learned counsel and perused the record.

It would be advantageous to refer the operating part of the judgment which reads as under:-

"Now diverting to the maintainability of appeal, admittedly the Judgment and decree were passed on 19.12.2011 and 19.12.2011, respectively by learned trial court, which were challenged through Civil Appeal No.9/2012, but the appeal was withdrawn on 18.3.2014. However the permission was sought to file afresh but the same was accorded save in accordance with law of limitation. In this regard Article 152 of Limitation Act, 1908 discloses the period of filing the appeal is thirty days only, hence, in my humble opinion the appeal is hopelessly time barred, hence the same stands dismissed with no order as to costs".

4. Perusal of aforesaid finding reflects that initially the applicant filed Civil Appeal No.09 of 2012 against judgment and decree dated 19.12.2011 but the same was withdrawn on 18.3.2014. It appears that though permission was sought to file a fresh appeal but such permission was granted in accordance with

law of limitation. I have confronted the learned counsel for the applicant as to what prevailed upon the applicant to first withdraw the appeal and then file a fresh to which no satisfactory reply was tendered. It appears that withdrawal of the first appeal was given conditionally by observing that a fresh appeal would be dealt with in accordance with law of limitation and therefore, when the subsequent appeal was filed the same was treated as time barred against the judgment and decree dated 19.12.2011 in view of article 152 of the Limitation Act. The counsel has been unable to point out any illegality in the impugned order whereas; even otherwise perusal of the judgment of the trial court reflects that the suit was dismissed after the thread bare examination of the evidence led by the applicant who failed to prove the case before the court.

5. In view of such position I am of the view that no case for any indulgence is made out as the impugned judgment appears to be correct in law and therefore, instant Civil Revision application is dismissed in limine.

S.Ashfaq

S.Ashfaq
JUDGE
8/9/12

197