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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Civil Revision No.S-26 of 2015

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A' 4 & 5.
2. For orders on CMA No.140/2015.
3. For Hearing of main case.

18.09.2017

Mr. Inayatullah G. Morio, advocate for the applicant.

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Through this Civil Revision, the applicant has impugned judgment dated 23.02.2015, passed by the II-Additional District Judge, Shikarpur in Civil Appeal No.46/2012 whereby the appeal of the applicant has been dismissed for non-deposit of the amount of Court fee.

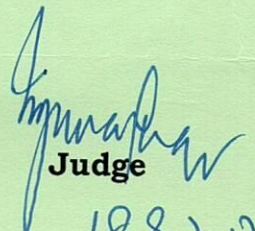
Learned counsel for the applicant submits that the trial Court in view of the dicta led down by the Hon'ble Supreme Court in the case of *Provincial Government v. Abdullah Jan* reported as 2009 SCMR 1378 has erred in dismissing the appeal as an opportunity for deposit of Court fee should have been given to the appellant. Counsel has further contended that a lenient view ought to have been taken and, therefore, instant revision be allowed by remanding the matter to the appellate Court.

I have heard the learned counsel for the applicant and perused the record. The appellant had impugned the judgment dated 21.11.2012 and decree dated 27.11.2012, passed by the II-Senior Civil Judge, Shikarpur in F.C Suit No.140/2011 (New) whereby the suit of the plaintiff was dismissed and such appeal was presented on 13.12.2012, however, no Court fee was affixed. The appellate Court vide order in dairy sheet dated 23.01.2015 observed that no Court fee has been deposited and adjournments were being sought on many dates of hearing. The appellate Court in view of such position proceeded further to decide the question of maintainability of the appeal and whether the

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same was time barred or otherwise. It appears to be a fact that the applicant even after admission of the appeal did not file any application for grant of time to deposit the Court fee nor it is the case of the applicant that part Court fee was deposited and the balance was required to be deposited. In fact appellant failed to deposit any amount of Court fee. The appellant all along failed to file any application under section 149, C.P.C for extension in time for deposit of Court fee. Such conduct on the part of the applicant as reflected from the record appears to be contumacious in nature, and disentitles the applicant from exercising any discretion under section 149, C.P.C for which even otherwise no request was filed or made on behalf of the applicant. The Hon'ble Supreme Court in the case of **Assistant Commissioner and Land Acquisition Collector, Badin v. Haji Abdul Shakoor and others** reported as **1997 SCMR 919** has been pleased to observe that *if the applicant is negligent and his conduct is contumacious then there exist no reason to show any indulgence to him for extending time.* Similar view has been taken by the learned single Judge of this Court in the case of **Qazi Muhammad Ilayas and 7 others v. Qazi Muhammad Raees and 3 others** reported as **2014 CLC 160.**

In view of hereinabove facts and circumstances of the case, I am of the view that no case for any indulgence is made out on behalf of the applicant. Accordingly, instant Civil Revision Application is dismissed in limine.


Judge
18.9.2017

M. Yousuf Panhwar/ **