

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Civil Revision No.S- 84 of 2014.

Date	Order with signature of judge.
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- 1.For hearing of C.M.A. No.354 of 2014.
- 2.For Katcha Peshi.
- 3.For order on C.M.A No.41 of 2015.

10.11.2015.

Mr. Rasool Bux Soomro, advocate a/w the applicant.

Mr. Bashir Ahmed Dargahi, advocate a/w the respondent No.2.

Mr. Ali Akber Kalhorro, State Counsel.

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This Civil Revision is directed against the order dated 06.12.2014 whereby learned 1st Additional District Judge, Larkana dismissed the application filed under Order XXXVII Rule 3 C.P.C, by the applicant/defendant in Summary Suit No.05 of 2014, holding the same time barred by one day.

Learned counsel for the applicant submits that the respondent No.2/plaintiff filed Summary Suit No.5 of 2014 against the applicant/defendant, who was served with summon on 21.11.2014 but could not file the application for leave to appear and defend the suit under Order XXXVII Rule 3 C.P.C within 10 days as there was a strike call on 01.12.2015 from District Bar Association, Larkana; as such, the application was filed on the next date i.e. 02.12.2014. Learned counsel further submits that instead of deciding the application for leave to defend on merits, the learned trial Court dismissed the same on technical grounds holding the same time barred by one day.

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On the other hand, learned counsel for the respondent No.2 submits that the strike call of the District Bar Association, Larkana was for the members of the Bar and not for the applicant/defendant who could have himself appeared before the trial Court to file the application for leave to defend, so much so, the applicant/defendant did not file any application under Section 5 of Limitation Act, 1908 for condonation of delay, therefore, the learned trial Court rightly dismissed the application of applicant.


Heard the learned counsel for the parties and perused the material available on record. Article 159 of Limitation Act, 1908 ("**the Act of 1908**") provides the period of 10 days, from the date of service of summons, for filing an application for leave to appear and defend a suit under summary procedure referred to in Section 128(2)(f) or under Order XXXVII C.P.C. In the instant case, it is an admitted position that the application filed by the applicant/defendant under Order XXXVII Rule 3 C.P.C was time barred by one day and for the condonation of delay no application under section 5 of the Act of 1908 was filed by the applicant/defendant.

In judicial system, law of limitation has got its own significance relating to period prescribed for instating proceedings. The Act of 1908 contains in its fold remedial provisions like Sections 5, 12 and 14 which empower Court to enlarge the period of limitation in peculiar circumstances of case on showing sufficient cause. It is a settled principle of law that the Court can not its own condone the delay making the provisions of Section 5 of the Act of 1908 applicable.

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For the foregoing facts and reasons, the impugned order does not suffer from any illegality or irregularity requiring interference of this Court. The instant Civil Revision is therefore, dismissed alongwith listed applications.


10/11/2015
JUDGE