

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P.No.S-554 of 2020

Date	Order With Signature Of Judge
Naik Muhammad & others	Petitioners.
Vs.	
Learned VII-Rent Controller, Karachi South & others	Respondents.

03.10.2024.

Mr. Mujtaba Sohail Raja, advocate for the petitioner.
Mr. Naeem Suleman, advocate for respondent No. 2.

ORDER

MUHAMMAD IQBAL KALHORO, J:- A rent case was filed against predecessor in interest of the petitioner bearing No.1165/2017 for eviction in respect of property viz. Shop No.4, Plot No.BR-51, 1-D/74 located on Tower Moolji Street, situated Off M.A. Jinnah Road, Karachi. However, during the proceedings predecessor-in-interest of the petitioners, who was the tenant, died on 28.09.2018. Application u/o XXII rule 2 CPC was filed by the petitioners to be impleaded as party in rent case on 16.11.2019 after delay of about one year and two months, whereas limitation under Article 177 of Limitation Act for moving such application is only 90 days. This application was heard and decided by impugned order on 05.03.2020.

2. The trial court while dismissing the application has observed in para 4 as under:-

I have heard the arguments advanced by the parties counsel and perused the material available on record. Admittedly the opponent No.1 died on 28.09.2018 and the instant application was moved on 16.11.2019 after delay of about one year and two months, whereas article 177 of Limitation Act provided 90 days for moving such application. Furthermore, the court under order XXII Rule 4 CPC is permitted to proceed with the matter notwithstanding the death of the defendant in the same manner as he was alive, such powers, however circumscribed by the condition that in case application for bringing legal heirs was not moved within the time prescribed by law, the court could proceed with the matter notwithstanding the death of the defendant. Furthermore, the effect of failure to implead legal representative of deceased within prescribed time would bar them from taking part in proceeding. As noticed above in the instant matter, the opponent's side miserably failed to file application for impleading them within the time prescribed by law. For the above reasons, the reliance is placed on PLD 2006

Karachi 258. Therefore, in the attending circumstances, I am inclined towards the argument of learned counsel for the applicant when he says that instant application is not maintainable being time barred. Therefore, dismiss the same accordingly.

3. Learned counsel for petitioners in order to justify delay in filing the application has said that petitioners were not aware about pendency of the case. This explanation can hardly be accepted as a valid ground to condone the delay, the each day of which needs to be explained and to allow the application, which was patently time barred. Learned counsel has also failed to explain as to why he has filed this petition directly against the order when he had a remedy of appeal under the provisions of Sindh Rented Premises Ordinance, 1979 as impugned order passed against the petitioners was final as for as their cause of action is concerned. I, therefore, see no merits in this petition and accordingly dismiss it alongwith pending application.

JUDGE

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