

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

IInd Appeal No.97 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection
For orders on CMA 3339/2024
For orders on CMA 3340/2024
For orders on CMA 3341/2024
For hearing of main case

18.11.2024

Syed Ghulam Hyder Shah Advocate for Appellants.

The Appellant has preferred the captioned Second Appeal under Section 100 CPC, seeking to impugn the Judgment made by the 2nd Additional District Judge/MCAC, Sanghar, in Civil Appeal No.77 of 2023 filed by the Appellant against the rejection of the plaint filed by him in F.C. Suit No.174/2021 before the 2nd Senior Civil Judge Sanghar.

As it transpires, the plaint was rejected by the trial Court on 17.05.2023, with the Appeal having then been filed on 17.07.2023, with a delayed of 14 days once the aspect of the summer vacation of the Court had been factored in to the matter. The relevant excerpt from the Order of the Appellate Court regarding such state of affairs reads as follows:

“I have perused the memo of appeal and its annexures including the certified copy of impugned order. It transpires that impugned order was passed on 17.05.2023. The period provided for filing of appeal is 30 days from the date of order. The appellant has applied for certified true copy of order on 14.07.2023, beyond the period of limitation prescribed, and it was delivered to him 15.07.202. Admittedly the limitation period for filing of appeal in instant matter expired during summer vacations, hence as provided in section 04 of limitation act, 1908, appeal should have been filed on the first opening day of Court, i.e 3rd day of July, 2023, but the appellant filed appeal on 17.07.2023 with the delay of about 14 days. In the circumstances, the proper course for the appellant was to file an application for condonation of delay under Section 5 of the limitation act but he has neither claimed excuse of delay in the memorandum of appeal nor has submitted an application for such purpose, therefore, I am of the view that without filing an application for condonation of delay in filing of appeal and without explaining the such delay in appeal, such time barred appeal could not be entertained, hence, there is no need to dive deep into the merits of the case.”

On query posed to learned Counsel as to what error or infirmity afflicted the Order of the Appellate forum, no cogent response was forthcoming. On the contrary, it was conceded that the Appeal had been filed with the stated period of delay without any Application having been filed under Section 5 of the Limitation Act.

That being so, the Order of the Appellate forum appears to be correct and unexceptionable, merely enforcing the law of Limitation as it should under the given circumstances. As such, the 2nd Appeal is found to be devoid of force and is dismissed accordingly along with the pending miscellaneous applications.

JUDGE