

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Application No. S-54 of 2015

Applicants are called absent despite service of notice upon applicant No.1, namely, Syed Nusrat Husain Shah.

Mr. Athar Hussain Abro, Advocate holding brief for Mr. Sarfraz A. Akhund, Advocate

Date of hearing : 28.04.2023

Date of order : 28.04.2023

ORDER

ZAFAR AHMED RAJPUT, J- This Civil Revision Application under Section 115. C.P.C. is directed against the order, dated 04.05.2015, whereby the learned III Additional District Judge, Sukkur dismissed an application under section 5 of the Limitation Act, 1908 (*"the Act"*) filed in Civil Appeal No. Nil of 2013 by the applicants/plaintiffs against the judgment and decree, dated 13.04.2013, passed by the learned II Senior Civil Judge, Rohri in old Civil Suit No. 01 of 2005, new Civil Suit No. 03/2011, filed by the applicants for specific performance of contract and injunction against the respondents, and in consequence thereof, the learned appellate Court dismissed the said Civil Appeal holding it as time barred.

2. The applicants filed their Civil Appeal along with an application under Section 5 of the Act in the Court of District Judge, Sukkur on 01.08.2013, which was assigned to learned III Additional District Judge, Sukkur who after hearing the parties, dismissed the application observing that no sufficient cause for condonation of delay was found.

3. The applicants have maintained this Civil Revision Application in person, who failed to make their appearance before this Court on many dates of hearing. Even the notice issued for today's date of hearing to the applicants has received

23

back served upon applicant No.1 but he is called absent. Under such circumstances, instead of dismissing this Civil Revision for non-prosecution, I deem it appropriate to decide it on merits.

4. It appears from the perusal of the material on record that the Judgment and Decree was passed by the Trial Court on 13.04.2013 and the applicants applied for the certified true copies thereof on 18.07.2013, after delay of more than 90 days. The only ground raised by the applicants for the condonation of such delay is that they came to know about dismissal of their suit vide judgment and decree on 17.07.2013, which under no circumstances can be considered a sufficient ground for condonation of such delay.

5. It is well settled principle of law that in order to succeed in application for condonation of delay, each and every day's delay is to be explained. In this regard, this Court has held in the case of *The West Pakistan Agricultural Development Corporation and 2 others v. Soomar and 2 others (PLD 1984 Karachi 190)*, as under:-

“Under section 5 of the Limitation Act the Court is empowered to exercise its discretion for condoning the delay if from the facts and circumstances of the case it is satisfied that the appellant due to sufficient cause was prevented from preferring the appeal within the prescribed time. Sufficient cause has nowhere been defined nor can a fixed rule be laid down to determine what sufficient cause is. It entirely depends upon the facts and circumstances of each case which may differ from one case to another. Therefore, one has to examine the facts and ground set out by the appellant. The discretion to be exercised by the Court should be in a judicial manner. Neither it should be arbitrary nor very liberal. If the discretion is exercised on wrong notion of law it will not be an exercise of judicial discretion. The Court has to see that while exercising discretion no injustice is done to any party. The notions of justice are not to be extended only to comfort the appellant but there is another party before the Court and he is the respondent. The Court has, therefore, to see that justice is done to both the parties according to law. The best rule to guide the discretion is whether the appellant has acted with reasonable diligence in presenting the appeal. In an application under section 5 of the Limitation Act it is the duty



of the party who is seeking condonation of delay, to explain the delay of each and every day and unless it is satisfactorily explained delay cannot be condoned. It is to be borne in mind that by lapse of times a vested right is accrued to the other party of which it cannot be deprived lightly”.

In the case of *Muhammad Hussain v Settlement and Rehabilitation Commissioner* (1975 SCMR 304), it was observed that in civil matters a valuable right accrues to the other side by laps of time and it is necessary that each day's delay should be necessarily explained. Similar principle was laid down in the case of *Muhammad Saeed v Shaukat Ali* (1982 SCMR 285). In the case of *Mst. Rukhsana Ahmed v Tariq Attaullah* (1980 SCMR 36), even one day's delay was not condoned, holding that even if the time requisite for obtaining the certified copy of the ejectment order is computed from date of application for grant of copy to date of its delivery, the first appeal filed by petitioner was barred by one day.

6. I am of the considered view that by expiry of period of limitation, valuable right is vested in respondents of which, they cannot be deprived of. Further, the applicants have failed to show any reasonable explanation for delay in filling appeal; rather the explanation of applicants is unsound and illogical.

7. For the foregoing facts and reasons, I do not find any jurisdictional error, factual or legal infirmity in the impugned order passed by the learned appellate Court; therefore, this Civil Revision Application having no merit is dismissed, accordingly.



JUDGE