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<p class=MsoNormal align=center style='text-align:center'><span
style='font-size:13.0pt'>THE HIGH COURT OF SINDH AT KARACHI</span></p>

<p class=MsoNormal align=center style='text-align:center'><span
style='font-size:13.0pt'>R.A.NO.146 OF 2007</span></p>

<p class=MsoNormal align=center style='text-align:center'><span
style='font-size:13.0pt'>&nbsp;</span></p>

<p class=MsoNormal align=center style='text-align:center'><span
style='font-size:13.0pt'>&nbsp;</span></p>

<p class=MsoNormal align=right style='text-align:right'><span style='font-
size:
13.0pt'>Before: <b>Mr.Justice Ali Sain Dino Metlo</b></span></p>

<p class=MsoNormal><span style='font-size:13.0pt'>&nbsp;</span></p>

<p class=MsoNormal><span style='font-size:13.0pt'>&nbsp;</span></p>

<p class=MsoNormal><span style='font-size:13.0pt'>1)                Messrs.Samta
Silver
Trading Pte Ltd.</span></p>

<p class=MsoNormal style='text-indent:.5in'><span style='font-
size:13.0pt'>Ship
Owners / charterers</span></p>

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Through
their attorney/ship's agent

the
Applicant No.2.

[illegible]

⁵th Floor, KDL Building,

<p class=MsoNormal style='text-indent:.5in'>58,
West Wharf Road,</p>

Karachi.....Applicants.

VERSUS

Messrs.Chiniot Enterprises (Pvt) Ltd.

<p class=MsoNormal style='text-indent:.5in'>a company incorporated in Pakistan</p>

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<p class=MsoNormal style='text-indent:.5in'><span style='font-size:13.0pt'>Carrying  
on inter alia, the business of </span></p>
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Import
& Manufacture of vegetable ghee

<p class=MsoNormal style='text-indent:.5in'>and
cooking oil with their office/factory</p>

<p class=MsoNormal style='text-indent:.5in'>Plot
No.2/B, Industrial Estate, </p>

<p class=MsoNormal style='text-indent:.5in'>Hattar.....Respondent.
</p>

<p class=MsoNormal> </p>

<p class=MsoNormal align=center style='text-align:center'>

 </p>

<h2>Date of hearing 03.04.2008</h2>

<p class=MsoNormal>Mr.Shahzad Siddiqui, advocate for the applicants.</p>

<p class=MsoNormal>Mr.Mazhar Lari, advocate for the respondent.</p>

<p class=MsoNormal> </p>

<h1> </h1>

<h1>JUDGMENT</h1>

<p class=MsoNormal> </p>

<p class=MsoNormal> </p>

<p class=MsoNormal style='text-align:justify;line-height:200%'>Ali Sain Dino Metlo,
J. By this revision the applicants, who are the
shipping
company and its agent in Pakistan, have challenged the order dated 27.8.2007
passed by the learned District Judge, Karachi West dismissing their appeal
bearing No.58 of 2007 as time-barred by three days. They had filed the appeal
against the decree dated 30.3.2007 passed by the learned III-Senior Civil
Judge, Karachi West in respondent's Civil Suit No.694 of 1999 directing them
to pay US \$5,474/- equivalent to Pak. Rs.253,365/- alongwith mark-up at the
rate of 10% per annum from the date of filing the suit till the realization
of
decreetal amount to the respondent for short delivery of palm oil.</p>

<p class=MsoNormal style='text-align:justify;text-indent:.5in;line-height:200%'> </p>

2. Briefly, the fact are that

on 1.9.1999 the respondent filed the above suit contending that they had imported 998.507 metric tons of palm oil from Malaysia under letter of credit issued by the Muslim Commercial Bank Ltd. Industrial Estate, Hattar. The consignment was delivered to the applicant No.1 at the port of Pasir Gudang under a bill of lading No.PK(PG)/PQ-07 dated 14.8.1998. However, at the time of discharge on or about 29.8.1998 at the port of destination i.e. port Bin Qasim, Karachi, the consignment was short by 7.679 metric tons. The shortage was confirmed by the surveyors representing all the parties. </p>

 </p>

3. The suit was contested and ultimately decreed on 30.3.2007. The applicants challenged the decree by filing appeal No.58 of 2007. The learned District Judge, Karachi West, dismissed it as time-barred by three days. Hence, the present revision. </p>

 </p>

4. The trial court pronounced the judgment and decreed the suit on 30.3.2007. The application for certified copies of the judgment and decree was made on the next day i.e. on 31.3.2007. However, the decree was prepared on 31.5.2007 i.e. after a long delay of two months. The cost was estimated on 5.6.2007 which was deposited on 9.6.2007. The copies were made ready on 16.6.2007. The stamps were supplied on 27.6.2007 and the copies were delivered on the same day. </p>

 </p>

5. According to the learned District Judge, the period of eleven days between the date on which the copies were made ready and the date of supply of stamps cannot be excluded as part of the time requisite for obtaining copies and, therefore, in his opinion, the appeal was time-barred

by three days.</p>

<p class=MsoBodyTextIndent style='text-indent:0in'> </p>

<p class=MsoNormal style='text-align:justify;line-height:200%'>6. The view taken by the learned District Judge is not tenable. The provision of sub-section (5) of section 12 of the Limitation Act, 1908, added by the Limitation (Amendment) Act of 1991, make it abundantly clear that the date of making the copy ready for delivery shall be relevant only when the said date is actually intimated to the person applying for copy. </p>

<p class=MsoNormal style='text-align:justify;line-height:200%'> </p>

<p class=MsoNormal style='text-align:justify;line-height:200%'>7. Before addition of sub-section (5) of section 12 *ibid* in 1991, there was some ambiguity and confusion about the '<i>time requisite</i>' for obtaining the copy. Sometimes it was said that the <i>time requisite</i> for obtaining copy was the time between the date of the application for supply of copy and the date on which it was made ready for delivery, and the time between the date of making the copy ready and the date of delivery was not treated as part of the <i>time requisite</i> for obtaining the copy (<i>1975 SCMR 157</i>). And sometimes it was said that the <i>time requisite</i> for obtaining copy could be extended to the date of delivery if the delay in obtaining delivery was due to the office giving wrong information or no information to the applicant as to the date on which the copy would be ready (<i>PLD 1973 S.C. 222</i>).</p>

<p class=MsoNormal style='text-align:justify;line-height:200%'> </p>

<p class=MsoNormal style='text-align:justify;line-height:200%'>8. However, after legislative intervention in the form of adding sub-section (5) to section 12 *ibid*, the matter stood clarified and the <i>time requisite</i> for obtaining copy "shall be deemed to be the time intervening between the day on which an application for the copy is made and the day <i>actually intimated</i> to the applicant to be the day on which the copy will be ready for delivery". Thus, the <i>time requisite</i> for obtaining copy can be limited to the date of making the copy ready for delivery only if such date was <i>actually intimated</i> to the applicant. In absence of such intimation, the <i>time requisite</i> for obtaining copy can be extended to the date of delivery, unless the applicant is shown to be grossly negligent in obtaining the delivery. In the present case

there is nothing to show that the appellants were negligent in obtaining the delivery. They obtained the delivery within 11 days for which they cannot be held to be negligent in the circumstances of the case particularly when they had no intimation about preparation of the copies and the officers of the court, who had taken two months in preparing the decree, were too lethargic in the performance of their duty. </p>

<p class=MsoNormal> </p>

<p class=MsoBodyText2>9. There is also no force in the contention of the learned counsel for the respondent that applicants having failed to supply stamps within seven days of the estimation of cost as required by rule 324 of the Sindh Civil Court Rules, shall not be entitled to exclude the time between the date on which the copy was made ready and the date on which stamps were supplied. The only consequence of failure to supply stamps within the prescribed period provided by the rule itself is that the application shall be rejected. In a precedent of this court, reported in <i>1983 CLC 1235,</i> the question was examined in detail and it was held that failure to supply stamps within the prescribed period cannot be given any consequence beyond the one mentioned in the rule itself. </p>

<p class=MsoNormal> </p>

<p class=MsoBodyText2>10. In the present case the cost was estimated on 5.6.2007 and the cost was paid on 9.6.2007, the stamps were not supplied on that day or within seven days i.e. on or before 12.6.2007. First, the cost without stamps should not have been accepted, secondly, in case it was accepted, the applicants should have been asked to supply stamps on or before 12.6.2007, and thirdly, in case stamps were not supplied by that date, the application should have been rejected so as to enable the applicants to move another application and file appeal within time. The applicants could have moved another application for copies on 13.6.2007 and could have filed the appeal within the period of limitation. It is the salutary principle of law that no person should be made to suffer on account of any act or omission of the Court or its officers.</p>

<p class=MsoBodyText2> </p>

<p class=MsoNormal style='text-align:justify;line-height:200%'>11. The precedent of the learned Single Judge of this court, reported in <i>2002 MLD 39,</i> relied upon by the learned District Judge in the impugned order as well as by the learned counsel for the respondent in his arguments seems to be <i>per incuriam</i>, as it does not discuss the above statutory provision and the earlier precedent of this court (<i>1983 CLC 1235</i>) and, therefore, I am not persuaded to follow it.</p>

Times New Roman
It was for the
above reasons that by a short order passed on 3.4.2008 the revision was
allowed, the impugned order was set aside and the matter was remanded to the
first appellate court for deciding the appellants' appeal bearing Civil
Appeal
No.58 of 2007, on merits.

JUDGE

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</html>