

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No. 09 of 2023

Date

order with signature of Judge

1. For orders on CMA No.238/2023.
2. For orders on office objection at "A"
3. For hearing of CMA No. 240/2023
4. For hearing of main case.

20th March, 2025

Mr. S. M. Ishrat Ghazali, Advocate for Appellant.

Mirza Sarfaraz Ahmed, Advocate for Respondent.

Mr. Ahmed Khan Khaskheli, A.A.G.Sindh.

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This appeal has been filed against Impugned judgment dated 15.01.2021. Without delineating into the facts pertaining to said appeal, both the learned counsels agree that the application fixed at Sr. No.1 (CMA No. 238/2023) under section 5 of the Limitation Act 1908 may be adjudicated first and if need be, other applications and appeal may be heard and adjudicated.

Learned counsel for the Appellant has Impugned the judgment of the appellate court dated 15.01.2021 passed in Civil Appeal No. 245 of 2018. It is evident from the last page of Impugned judgment that application for obtaining certified copy of said judgment was filed on 12.01.2023 (only three days prior to expiry of two years) and thereafter instant appeal was filed before this court. Learned counsel has filed application for condonation of delay on the sole ground that the delay of about two years may be condoned on the ground that the Impugned judgment in question is void and no limitation runs against a void order. Learned counsel has further stated that time in the instant case will start running from the date of the executing court allowed the execution application and not from the date of Impugned judgment.

Conversely, learned counsel for the Respondent has stated that appeal is hopelessly time barred and delay of each and every day, as required under the law, as well as several judgments of superior courts, has not been

explained by the learned counsel for the Appellant in the affidavit filed along with said application.

Heard the learned counsel for the parties and perused the record.

It is evident that the Impugned judgment was passed on 15.01.2021 and application for obtaining certified copy was moved on 12.01.2023, after lapse of approximately two years. I agree with learned counsel for the Appellant that in cases where the order is void the court ought to take a more lenient view in condoning the delay. However, the learned counsel has been unable to identify any ground on which the Impugned judgment can be termed "void". Moreover, the conduct of Appellant does not warrant grant of such leniency in the circumstances of present case. It is evident that Execution No. 08 of 2021 was filed for execution of Impugned judgment and the present Appellant has fully participated in the said proceedings having complete knowledge of Impugned judgment. The record reflects that the learned counsel for the Appellant very candidly acknowledged participating in the execution proceedings and even filed an application under Order 47 C.P.C on 04.11.2022. The ground taken by the Appellant that time in the instant case will start running from the date of execution application was allowed and not from the date of Impugned judgment, is unfounded and novel. In the light of what has been held above the instant appeal is dismissed, alongwith all pending application, with no order as to costs.