

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

M.A. No.S-04 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

For orders on office objection No.14.
For hearing of CMA No.1813/2025
For hearing of main case.

07-05-2026

Mr. Faisal Nadeem Abro, advocate for the appellant.
Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

JAWAD AKBAR SARWANA, J:- T This Miscellaneous Appeal has been preferred against the judgment dated 24.12.2024 passed by the learned Additional District Judge-IV, Shaheed Benazirabad, in Summary Suit No.70 of 2023. The instant Miscellaneous Appeal was instituted before this Court on 24.05.2025. Perusal of the photocopy of the certified copy of the judgment and decree attached with the appeal reflects that the certified copy of the impugned judgment and decree was applied and obtained in the months of January and February, 2025, respectively. Simultaneously, several documents pertaining to Summary Suit No.70 of 2023 are also attached with the appeal which reveal that another set of certified copies was applied for and obtained between 21st and 22nd May, 2025. Subsequently, as mentioned above, the Miscellaneous Appeal was filed on 24.05.2025. The appellant has filed CMA No.1813 of 2025 seeking condonation of delay in filing the appeal against the above-mentioned judgment and decree dated 24.12.2024.

Learned counsel for the appellant has taken this Court through the impugned judgment dated 24.12.2024, particularly paragraph No.3 thereof, which reads as under:-

“On service of notice/summon as provided U/O V CPC initially defendant put his appearance and filed application for leave to defend which was allowed and then he has not turned to proceed with this suit and therefore, was debarred and made exparte by this court vide order dated 16.05.2024.”

Learned counsel contends that the appellant had filed an application under Order IX Rule 7 CPC, available at page No.55 of the file. According to the order dated 19.09.2024 passed on the said application, the appellant/defendant's application seeking consideration of leave to defend was dismissed/rejected. Learned counsel argued that the impugned judgment is entirely contradictory to this earlier order dated 19.09.2024. Whereas the order dated 19.09.2024 states the leave to defend was dismissed, in contrast the judgment records that the leave to defend was allowed. Both order/judgment cannot co-exist. This constitutes a material irregularity in the judgment and decree. He further contends that if paragraph No.3 of the impugned judgment is accepted as correct, then there is no order available on record passed by the trial Court articulating whether leave to defend was granted conditionally or unconditionally, which is a mandatory statutory requirement under Order XXXVII CPC.

Heard learned counsel. While counsel's aforementioned contentions require consideration, yet the Miscellaneous Appeal filed is hopelessly time barred. Clearly, this judgment and decree dated 24.12.2024 cannot be challenged almost five (5) months later, i.e. on 24.05.2025. While appellant may well have a right however, the remedy stands extinguished under the Limitation Act, 1908. This Bench has also considered the grounds taken in the application under Section 5 of the Limitation Act, 1908, which is bereft of any satisfactory explanation for each day's delay. Learned counsel submits that the delay occurred due to the fault of the previous counsel. Regrettably, such explanation cannot come to the rescue of the appellant. A valuable vested right has accrued to the respondent/plaintiff. The applicant remains at liberty to take all available pleas available under Order 21 CPC after passing of decree.

In view of the above facts and circumstances of the case, this Miscellaneous Appeal, along with pending application, stands dismissed.

J U D G E