

IN THE HIGH COURT OF SINDH AT KARACHI

IIInd Appeal No.202 of 2025

Date	Order with Signature of Judge
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Direction
For order as to maintainability

02.10.2026

Mr. Arshad Masood, Advocate for the Appellant

JUDGMENT

Saman Rafat Imtiaz; J: Through this judgment, I intend to dispose of the instant second appeal which has been preferred by the Appellant against the Order dated 14.01.2025 [**“Appellate Court Order”**] passed by the learned VIIth Additional District Judge, Karachi, South [**“Appellate Court”**] dismissing the Appellant’s Civil Appeal No.06 of 2015 being hopelessly time barred and bereft of force which appeal was preferred by the Appellant against the Order dated 07.09.2024 [**“Trial Court Order”**] passed by the learned Ist Senior Civil Judge, Karachi, South [**“Trial Court”**], whereby the filed by the Appellant in Suit No.1312 of 2023 was rejected as time barred, without any cause of action and not maintainable on application under Order VII Rule 11 CPC filed by the Respondents.

2. The learned counsel for the Appellant explained the background of the matter that the Appellant filed Suit No.1312 of 2023 for recovery of value of articles, rent and damages etc. amounting to Rs.50,000,000/-. The plaint stated that the Appellant had lodged FIR No.23 of 2022 against the Respondents as well as Sher Afsar under Sections 380/448/504/506/34 PPC with police station Civil Lines, Karachi vide case No.3431 of 2022 which is pending before the Civil Judge and Judicial Magistrate-1, Karachi, South. The Appellant had filed Suit under Illegal Dispossession Act vide case No.535 of 2023 pending in the District Karachi, South under Sections 3, 4, 7 and 8 of Illegal Dispossession Act, 2005 against the Respondents which is also pending in District Judge Court, Karachi, South. However, as per District Court’s order dated 19.09.2023 interim possession was given by the illegal occupants to its original owner/Appellant. After lodging the above FIR, the Respondents got bail before the police officials of P.S. Civil Lines could arrest them as such they are now on bail. The Appellant alleged that the Respondents have given mental

agony/torture by spoiling the reputation of the Appellant in the eyes of the neighbors, friends, brotherly and relatives as some of them are also friends of the Appellant, caused financial losses/rent and defamed them. The Respondents besides others such escaped or might have left this country and may no more be available/residing in the premises, now absconder and issued U/s 87/88 Cr.P.C implementation, therefore, the Appellant is entitled to claim/to be paid rent at the rate of Rs.40,000/- per month and now Rs.70,000/- per month since their illegal occupation i.e. with effect from 01.7.2007 along with markup as per law, amounting to minimum around Rs.7.76 million and lead to Rs.10 million accordingly. The Appellant in his evidence stated that he had various articles such as expensive furniture and other equipment, television, computer, laptop, video cameras, projector, expensive ornaments and old articles, electronic teaching aid materials, many appliances, other luxury items, many others around 100 family albums, medals, awards and other woodworks and many other articles and items etc. amounting to approximate Rs.100 million before illegal possession by the Respondents. It was alleged that the cause of action accrued to the Appellant firstly on 01.07.2007 when the Respondents refused to vacate above flat, secondly when the Respondents involved in the above case came, thirdly when the learned Trial Court of the First Judicial Magistrate after hearing the parties and their counsels which deems the matter in favour of the Appellant and the Respondents failed to prove their version, lastly when the Appellant was allowed interim possession and the Respondents continued to threaten day to day till today.

3. The learned Trial Court in its Impugned Trial Court Order held that the suit for recovery of value of articles, rent and damages etc. amounting to Rs.50,000,000/- was time barred under Article 110 of the Limitation Act which provides three years for recovery of arrears of rent from when the arrears become due whereas the arrears sought were for the period with effect from 01.07.2007 and as such the suit was hopelessly time barred. The Impugned Trial Court Order is dated 07.09.2024 whereas the appeal was filed on 06.01.2025 which was, therefore, dismissed as time barred, hence the instant appeal.

4. The learned counsel for the Appellant contended that the Trial Court overlooked the fact that the Appellant's Complaint under the Illegal Dispossession Act, 2005 was decided in favour of the Appellant vide Judgment dated 6-11-2024 and as such the suit was not time barred but conceded that there was delay in filing the appeal against the Impugned Trial Court Order.

5. The Impugned Trial Court Order is dated 07.09.2024 whereas the appeal against the same was filed by the Appellant before the Appellate Court on 06.01.2025. Therefore, the appeal has been dismissed as time barred and bereft of force vide the Impugned Appellate Court Order. In the memo of the instant appeal, it has been stated that the Appellant was unaware about the proceedings of the civil suit and was shocked to know about the Impugned Trial Court Order without any explanation as to why the Appellant was unaware of the proceedings it had itself instituted being the plaintiff and as such was obligated to pursue the proceedings vigilantly.

6. Furthermore, this is not the reason stated by the Appellant in the application for condonation of delay filed by him before the learned Appellate Court whereby the reason given is Advocate's health issues, fulfilling of revised requirement of submission of appeal as well as the threats of the Respondents. Not only has such reason not been substantiated but even otherwise it is settled law that the party cannot plead lawyer's negligence in order to seek condonation of delay by him. Here, it is not even negligence of the Advocate but his health that has been taken as a ground for condonation when there was no impediment for the Appellant to have engaged some other counsel. Similarly, there is no evidence of threats being extended by the Respondents and even otherwise no explanation has been given why the Appellant was able to file the appeal belatedly despite such facts. The Appellate Court has rightly observed that valuable rights accrue to the other side upon expiry of limitation. But most importantly, the contradiction in the reasons given for the delay in the condonation application submitted before the Appellate Court and the reasons given in the memo of the instant appeal constituting misrepresentation is sufficient to dismiss the instant appeal.

7. Furthermore, the instant appeal is itself time barred having been filed on 26.05.2025 against the impugned Appellate Court Order dated 14.01.2025. The reasons given in CMA No.4060 of 2025 for condonation of delay are the same as the condonation application filed before the Appellate Court i.e. Advocate's health issues, fulfilling of revised requirement of submission of appeal as well as the threats of the Respondents, which are unsubstantiated and also do not comprise cogent reason for the Appellant's failure to file the appeal within time for reasons aforesaid.

8. In view of the foregoing, CMA No. 4060 of 2025 for condonation of delay is dismissed. Consequently, the appeal along with pending applications is dismissed *in limine* as time barred and being devoid of merit.

JUDGE

Asif