

JUDGMENT SHEET

IN THE HIGH COURT OF SINDH, KARACHI

I. Appeal No.114 of 2016

Date	Judgment with signature of the Judge
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Salman Capital Investment (Pvt) Ltd.....Vs. MCB Bank Ltd.

25.02.2025.

Mr. Muhammad Immad Qamar, advocate for Appellant.

Mr. Muhammad Baqar Raza, advocate for respondent.

J U D G M E N T

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MUHAMMAD IQBAL KALHORO J: Appellant Company filed a suit for declaration, recovery of damages of Rs.33628,062/- and cost of funds U/s 9 of Financial Institutions (Recovery of finances) Ordinance, 2001 (Ordinance, 2001) against respondent bank stating in the plaint that the plaintiff is one of corporate members of Karachi Stock Exchange, whereas the defendant is engaged in banking business. Plaintiff had availed a running finance facility from defendant upto Rs.50 million by virtue of an agreement dated 07.08.2008 which plaintiff had been successfully running and in this respect had been offering, from time to time, security by way of pledge of third party shares with permission of its client.

2. In 2008, the Stock market crashed and in November, 2008 the defendant bank stopped clearing transactions of the plaintiff. Acting unilaterally, the defendant bank changed haircut of the shares against pledged stock so much so that some shares were downgraded from 50% to 0%. The respondent bank changed its banking spread from 3 months Kibor+3.5% to 3 months Kibor + 5% without a prior intimation or warning and refused to release pledged shares even though plaintiff offered cash for them.

3. Finally, in November, 2008, the defendant bank freezed running finance facility of plaintiff and disposed of third party shares deposited by the plaintiff without intimation or its consent causing loss to the plaintiff to the tune of Rs.36.36 million.

4. Upon service, the respondent Bank filed an application u/s 10 of the Ordinance 2001 which was allowed vide order dated 19.04.2010 and following issues were framed:-

1. Whether the suit is not maintainable?

2. Whether the plaintiff has violated the terms and conditions of finance agreement by not making timely payments?
3. Whether the plaintiff has got nay cause of action for filing the present suit against the defendant's bank?
4. Whether the plaintiff was defaulter of the answering defendant?
5. Whether the plaintiff is entitled to get the remedy of declaration and recovery of damages of Rs 33,628,062/- as prayed?
6. What should the decree be?

5. Both the parties filed their respective affidavits in evidence in support of their case. The Banking court vide impugned judgment dated 21.01.2016 and decree drawn on 01.02.2016 dismissed the suit with no order as to costs, hence this appeal.

6. When this appeal was taken up for hearing on 21.02.2022 by a different Division Bench of this court, a question to its maintainability on the ground of limitation was raised and noted down and learned counsel for appellant was obligated to satisfy the court on this point.

7. Today learned counsel for appellant has drawn our attention to CMA 3573/2016 filed U/s 29 of the Limitation Act r/w section 24 of Ordinance, 2001 and section 151 CPC to explain default in filing the appeal. He has argued that delay in filing the appeal was not deliberate or intentional but occurred due to the fact that appellant's authorized representative had fallen ill. Further, he has referred to the contents of supporting affidavit filed by Salman Masood, the authorized representative, in support of this application to impress his case for condonation of delay.

8. Whereas, learned counsel for respondent bank has opposed this application and submits that the limitation for filing appeal against impugned judgment and decree was 30 days but this appeal was filed on 15.10.2016, after a delay of 09 months which has not been explained. He has further submitted that certified true copy of the judgment and decree was obtained on 16.08.2016, even then the appeal was not filed within 30 days of such date. That the appeal is hopelessly time barred and liable to be dismissed.

9. We have heard the parties and perused material available on record including subject application filed for condonation of delay. As per section 22 of Ordinance 2001, the period provided to an aggrieved person to file an appeal to the High Court against any judgment, decree, sentence or final order passed by a banking court is 30 days of such judgment etc.. Admittedly, the appellant has filed the appeal with a delay of atleast 08 months although as per

requirement of law the appellant was obliged to file the appeal till 30th March, 2016. Explaining the delay, the authorized representative of the appellant in his supporting affidavit has stated that his son Mr. Kamal Salman Masood was Chief Executive Officer (CEO) and authorized to file the suit as per a board resolution; that his son had left for USA in December, 2009 and had since been living in California USA. After his departure, he was appointed as authorized officer and since then had been pursuing the matter till mid-September, 2015 when due to economic crisis and distress he became incapacitated and stopped doing all the work. Then he suffered from neurological disability and disorder, hence he remained under treatment of one Doctor since September, 2015.

10. He has further stated that he was still under the treatment but somehow had recovered in September, 2016 and then pursued the matter. According to him, appellant company was a family concern, was established by his late father; the entire shareholding and Directorship always remained with his family. His father passed away in September, 2008, since then company has been managed by him and his son. Post market crash in 2008, his company was almost finished, hence his son moved to USA and the responsibility to look after the company affairs fell on his shoulders. He could not withstand economic crises due to his advanced age and suffered from a breakdown. According to him, the appeal has been filed with delay due to his disability. When in August, 2016 he regained some capacity to work, he requested legal counsel to find out fate of his suit. He was taken aback when came to know of dismissal of the suit in January, 2016, hence he engaged some other counsel and asked him to file the appeal with an application for condonation of delay.

11. Along with the application, a Photostat copy of a certificate purportedly issued by Dr. Salman Saeed Sadiq has been filed by the deponent to support his statement reiterated above. The certificate is dated 15.09.2016 and depicts that the deponent had remained under the treatment of said doctor for severe post trauma stress disorder. It does not however, show that for how much period deponent remained under the treatment of the said doctor and from when. The Doctor has not clarified either whether the deponent was not even able to communicate simple instructions to his lawyer to file an appeal within time, or that he was so incapacitated that his routine life had been compromised so much so that he had lost his ability to perform daily chores or run routine errands like a normal person. Therefore, this certificate is of a little help to the appellant for covering delay in filing the appeal. The reason of suffering from stress, disorder given by the deponent is market crash in 2008, however, it is

strange that he did not suffer from any disability or stress in 2008, but in 2015/2016 when effects of market crash had already been watered down and the market had regained its bullish trend. The second ground raised by the deponent in support of his application is departure of his son from Pakistan to USA. But his affidavit shows that his son had left in 2009, whereas the suit was dismissed in January, 2016 after about 6/7 years. There is nothing on record to infer that departure of his son to USA had anything to do with dismissal of the suit or it was a cause withholding the appellant from filing the appeal in time. Then, it is not clear that in those intervening years since his son had left, the deponent did not perform any act vis-a-vis affairs of the company, etc: including pursuing the case, but if so, then, its reasons.

12. Notwithstanding the above, it is not explained in the application that when the certified true copy of impugned judgment and decree was obtained as per endorsement on both the documents on 16.08.2016, then why not within 30 days thereafter the appeal was filed and why the appeal after delay of two months thereafter was filed. It is a trite law that delay of each and every day in filing the appeal has to be explained. In this case, the authorized officer of the appellant has miserably failed to account for delay of each and every day in filing the appeal as required by law. The delay apparently caused by indolence and negligence of the appellant company's authorized officer is shocking and unconscionable in that no cogent material has been brought on record to justify the same except a vague statement that authorized officer was suffering from some stress causing him mental disorder. Neither the gravity, nor the duration of which has been specifically revealed.

13. The Supreme Court in case of Muhammad Nawaz and others Vs. Mst. Sakina Bibi and others (1974 SCMR 223) has laid down that even a counsel's neglect to inform his client about fate of the case would not per se be a sufficient ground for condonation of delay when valuable rights accrue in favour of opposition party. In the case of Ahmed Din Vs. Ghulam Muhammad through legal heirs and others (2000 SCMR 647), the Supreme Court has held that petitioner's ground of living in a far off village and his lack of knowledge regarding dismissal of the appeal by High Court was a matter purely between him and his counsel, cannot be considered a sufficient ground for condonation of delay. In the case of Mst. Hajra Bibi & others Vs. Abdul Ghani (2002 SCMR 1405), it has been held that non supply of cause list to counsel for a party would not constitute a valid ground for condonation of delay in absence of affidavit of the person concerned. Finally, in the case of Irshad Ahmed Vs. Pervez Akhter

& others (2000 MLD 1), a Division Bench of this court has held that on account of dismissal of the suit, valuable rights accrue in favour of defendants which could not be taken away unless justifiable strong and convincing cause was shown to the court.

14. The reason to cite aforementioned case law on the point is to emphasize that the law of Limitation has to be construed in strict sense because due to negligence and indolence of one party in pursuing the matter in the court, the valuable rights are accrued in favour of the other party which cannot be done away with on flimsy and unsubstantiated grounds. The superior courts have been very strict in condoning the delay in filing appeal etc. against the order etc. without being satisfied about validity and sufficiency of the grounds raised for condonation of such delay.

15. In this matter, as observed above, a vague and generalized statement has been given by the authorized officer of the appellant company to justify delay in filing the appeal. The said statement is not found confidence inspiring by us and, therefore, not believable. That said, there is nothing on record to show that after obtaining certified copy of impugned judgment and decree, why the authorized officer failed to file the appeal within 30 days thereafter. Nothing has been brought on record either to put forward an explanation of delay of each and every day in filing the appeal since February, 2016. Therefore, in the light of such facts and ratio laid down in above said cases, we find this appeal hopelessly time barred. Consequently, we dismiss application u/s 29 of Limitation Act r/w section 24 of Ordinance, 2001 and section 151 CPC and as a result dismiss the appeal being time barred alongwith pending applications.

The appeal is accordingly disposed of alongwith pending applications.

JUDGE

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