

Appeal dismissed as time barred

34

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
C.P. No.S-947 of 2024

Date _____ Order with signature(s) of Judge(s) _____
FRESH CASE.

1. For orders on CMA No.7101/24
2. For orders on CMA No.7102/24
3. For orders on CMA No.7103/24
4. For hearing of main case.

13.08.2024.

Mr. Imran Rana, Advocate for the Petitioner.

Learned counsel for the petitioner had filed this petition against the impugned order dated 22.07.2024 passed by the Addl. District Judge IV (Central) Karachi which upheld the judgment passed by the VIII Rent Controller (Central) Karachi dated 20.05.2024 whereby it was held that:-

"Keeping in view of above stated detailed discussion and the result thereof, it appears that the applicant has successfully proved his case against the opponent by adducing much confidence inspired evidence, hence the ejectment application is allowed on the ground of relationship of landlord and tenant between applicant and opponent respectively, and also on the ground of default in payment of monthly rent and thereby, the opponent is directed to hand over the vacant and peaceful possession of the rented premises i.e. shop No.2, situated at Plot No.2/848-A, Liaqutabad Karachi to applicant within 30 days without fail."

2. The petitioner filed appeal before the Addl. District Judge-IV (Central) Karachi against the impugned order which was dismissed on 22.07.2024 based on the fact that the appeal had been filed with a delay of 11 days after the prescribed period for appeal. Learned counsel has stated that the appeal was filed with 11 days delay because the petitioner/tenant was unwell. This fact has also recorded in the appellate court's order, which is reproduced hereunder:-

"Heard and perused the record. Record reveals that appellant through his attorney has contested the matter before the trial court, as such he was in knowledge of proceeding as well as announcement of judgment. Impugned judgment has been passed on 20.05.2024, whereas, instant appeal has been presented on 11.07.2024, with the delay of 11 days, even after exclusion of summer vacation period and no explanation has been furnished on such account. Though the application under Section 5 of Limitation Act has been filed by the appellant's side but no cogent ground has been mentioned in it, as such no any medical record has been attached or produced in order to ascertain about the serious illness of attorney of appellant. The appellant has not shown sufficient cause to show that it was beyond his control for not filing of appeal within time. It is very much settled principle of law that each and every day for delay is to be justified by the appellant but he failed to establish the same. While enacting the Limitation Act, 1908 the legislature in its wisdom has fixed the period of limitation for a particular action. The structure of the law is founded upon the legal maxims "*that delay defeat equity, time and tide wait for none and law help the vigilant not the indolent*". On simple calculation, as mentioned herein above, the appeal is to be filed by the appellant within the period of one month, but he failed to file the same within time even after excluding the period of summer vacation. No explanation has been furnished by the appellant on such account. I am of the considered opinion that the instant appeal is hopelessly time barred."

3. It is noted that the learned counsel for the petitioner/tenant had not been able to point out any legal infirmity in the order under appeal. He has simply relied on the bald statement that the petitioner/tenant was unwell. However, he has not produced any evidence, medical or otherwise, at all to prove that the tenant was unwell. Now it is well settled principle of law that each and every day of delay in filing appeal must be explained. In this case no cogent explanation has been filed in delay of filing appeal by the petitioner especially when the tenant was represented in the original proceedings and was well aware of the judgment against him. It is his responsibility to ensure that the appeal is filed in time under these circumstances if he so desires. He has clearly failed to do so without giving any plausible explanation.

4. Since learned counsel for the petitioner has not been able to point out any legal infirmity in the appellate order dated 22.07.2024 which is impugned in this petition, hence the instant petition is hereby dismissed in limine alongwith all listed applications.