

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No.320 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Hearing of case (Priority)

1. For orders on CMA No.7176/2024 (U/A)
2. For orders on CMA No.7177/2024 (Contempt)

21.08.2024

Mr. Babar Ali Shaikh, Advocate for the Appellant.
Mr. Hussain Bux Balouch, Advocate for Respondent
No.1.
Mr. Shehreyar Qazi, Addl. A.G.

MUHAMMAD KARIM KHAN AGHA.J., Muhammad Asim Hussain
Khan filed a Civil Suit No.1330/2017 in the Court of VIIth Sr. Civil
Judge Karachi Central for recovery and mesne profit in respect of
residential house on Plot No.R-733, measuring 120 sq. yards, Sector
No.10, situated in North Karachi (the Property) which was in
possession of the Defendant Muhammad Amir and it was found in
the impugned judgment dated 08.10.2019 in favour of the Plaintiff as
under in terms of ownership of the Property and mesne profits:-

“In view of the above facts and evidence came on record, I am of the humble view that oral instance of Plaintiff is supported with the documentary evidence which has un-rebutted and un-challenged. Moreover no any defense to his claim, while it is settled law that mere filing of written statement has no legal worth, in the circumstances I have concluded that plaintiff has discharged his burden of proof, hence issue decided in affirmative” i.e. Plaintiff is entitled to possession of the Property.

“Conversely the defendant has failed to show his any right or title over the property in question, therefore the Defendant would be deemed to have been in unlawful occupation and possession of the suit property. Hence in the circumstances the Plaintiff is entitled for the mesne profit at the rate of Rs.40,000/- per month from the date of passing of this judgment viz, 08.0.2019 without markup against the defendant for illegal occupation for the suit property. Hence both the issues decided accordingly.”

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2. Being dissatisfied with the impugned judgment 08.10.2019 Muhammad Amir the appellant moved an appeal which was dismissed vide order dated 02.11.2023 by the Court of VIIth Addl District & Sessions Judge, Karachi Central, largely on the basis that the appeal was time barred.

3. I have heard the counsels and perused the record. The following paragraphs of order dated 02.11.2023 which are set out below show the conduct of the appellant in pursuing these proceedings under question which lead to them being time barred.

"The record reflects that the appellant remained vigilant throughout the proceedings before the trial court and contested his case and even certain application under Order VII Rule 11, CPC had also been preferred by appellant, which was dismissed. The record further reflects the applicant kept changing his counsel and tried his best to linger on the matter before trial court on one pretext or the other, till it was finally disposed of in favour of respondent vide judgment and decree dated 08.10.2019. Furthermore, it is also matter of record that appellant had preferred one civil revision application No. 07/2019 before the appellate court challenging therein the order of dismissal of application filed under Order VII Rule 11 CPC and such civil revision was also dismissed by learned Appellate court in non-prosecution.

Statue provides limitation for filing appeal against the judgment passed by the trial Court as 30 days. It is the matter of record that impugned judgment and decree were passed on 08.10.2019, therefore application u/s. 12(2) CPC was filed by the appellant which was also dismissed so also revision of the said order has also been dismissed on 30.10.2023 by the learned VIIth Additional District Judge Karachi-Central. All these things reflect that the appellant remained vigilant throughout the proceedings.

It is well settled principle that no time barred proceedings can be entertained without first deciding the question of condonation of delay. Appellant claimed condonation of delay in filing appeal on the ground that order is illegal and void based upon forged documents therefore the limitation is not applicable against such order, which does not amount to plausible explanation of delay of each day as the party cannot seek benefit on the ground of negligence as the law favour vigilant not the indolent. The conduct of appellant reflects during trial and during pendency of the revision application that he was more interested to gain more time and drag the matter. The case law relied by the learned counsel for the appellant is distinguishable with the facts of the case in hand."

4. In this case the appellant had 30 days in which he had to file the appeal. This appeal has been filed after a period of about 04 years. It is well settled that each and every day for the delay in filing the appeal must be fully explained. In this case no plausible explanation has been given and as such the appeal is hopelessly time barred.

5. As noted in the order dated 02.11.2023 which is under appeal it appears that the conduct of the appellant reflects during the above proceedings that the appellant was not vigilant and appeared to be using tactics to drag out the matter which enabled the appellant to remain in possession of the Property for 05 years from the impugned judgment dated 18.10.2019 in which he still remains.

6. It may be mentioned here that each day of delay in filing the application / appeal leads to a valuable right accruing in favour of the Respondent. In this case this right would be even more valuable as the delay was almost four years without explanation. Learned counsel for the Appellant has not been able to point out any legal infirmity in the order dated 02.11.2023. I also find no legal infirmity which would require interference with order dated 02.11.2023.

7. As such since this appeal is hopelessly time barred, same is hereby dismissed.