

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No.18 of 2014

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

Before: Mr. Justice Nazar Akbar

Appellant No.1 : M/s. Gagarmayang Maritime Pte Ltd.,

Appellant No.2 : M/s. GBLT Ship Management Pte Ltd.,
Through Mr. Siddiq Shahzad, advocate.

Versus

Respondent No.1 : M/s. Azhar Corporation (Pvt) Ltd.
Through Mr. Mazhar Imtiaz Lari, advocate.

Respondent No.2 : M/s. Transtrade (Pvt) Ltd.,

Date of hearing : **03.12.2018**

Date of Decision : **03.12.2018**

JUDGEMENT

NAZAR AKBAR, J. The appellants through this IInd Appeal have challenged the concurrent findings. The Ist Senior Civil Judge, South Karachi by Judgment dated **29.07.2010** decreed **suit No.667/2008** filed by Respondent No.1 and the VIIth Additional District Judge, South Karachi by judgment dated **09.12.2013** passed in **Civil Appeal No.43/2011** maintained the said findings of trial Court.

2. Precisely the facts of the case are that Respondent No.1 filed **civil suit No.667/2008** against the appellants for recovery of **US \$ 10,099.00** stating therein that Respondent No.1 has imported the consignment viz 468.850 Metric Tons Inedible Top White Tallow

from Uruguay under two bills of lading for delivery at the port of Karachi and a sum of **U.S \$ 3,47,058.25** being C&F price of the said consignment was paid by the importers to the shippers/suppliers M/s S.A.P.I Spa under letter of credit No.HMBF/LC/6205 dated **17.05.2007** opened in their favour through the Habib Metropolitan Bank Ltd, Kotwali Road Branch, Faisalabad. It was averred that the appellants/ carriers entered into a contract of affreightment under their three bills of lading **No.1&2** dated **05.06.2007** for carriage and delivery of the consignment to Respondent No.1 at Karachi Port and accordingly carried the consignment on board their vessel/tanker Gagarmayang which arrived at Karachi Port on or about **28.07.2007** and discharged it into the shore tanks. After completion of discharging process, the attending surveyors representing all the parties alongwith ship surveyors carried out taking of ullages report and measurements of the goods/Inedible Top White Tallow discharged from the ship into the shore tanks, jointly and found confirmed it to be short by 8.511 Metric Tons. Therefore, on account of short landing of the suit consignment to the extent of 8.511 Metric Tons Respondent No.1 have suffered loss to the extent of the amount of **U.S \$ 10,099.00**, as such, Respondent No.1 approached the appellants for settlement of their claim but the appellants failed to do so, therefore, Respondent No1 filed the said suit for recovery of **U.S \$ 10,099.00** with interest/markup.

3. Appellants/defendants were served through various modes but they failed to appear before the trial Court, therefore, by order dated **14.07.2010** exparte proceedings were initiated against them

and affidavit in exparte proof was filed by Respondent No.1/ plaintiff. He examined himself and produced several documents such as photocopies of Letter of Authority as Ex-P/2, letter of Credit as Ex-P/3, two bills of lading as Ex-P/4 & P/5, two invoices as Ex-P/6 & Ex-P/7, survey report as Ex-P/8, two bills of entry as Ex-P/9 & Ex-P/10 and extract of Resolution dated 21.12.2001 as Ex-P/11.

4. The trial Court after considering the material available on record decreed the suit in favour of Respondent No.1/ plaintiff by judgment dated **29.07.2010**. Against said judgment, the appellants filed Civil Appeal No.43/2011 before VIIth Additional District Judge, South Karachi which was dismissed by judgment dated **09.12.2013** being hopelessly time barred by **47 days**. The appellants filed instant IInd Appeal against both the judgments.

5. I have heard learned counsel for the parties and perused the record.

6. Learned counsel has attempted to argue that there was no willful and deliberate absence of the appellants from the trial Court, therefore, the trial Court ought to have recalled its exparte judgment & decree. He has further contended that the trial Court has failed to appreciate that the summons have not been served on the appellants. However, unfortunately the dates and time even the conduct of the appellants is apparent from the record shows that the appellants even after having complete information about exparte judgment & decree have failed to approach the Court from the date of knowledge within 30 days. The very ground taken by

the appellants in their application for condonation of delay in filing the appeal was not properly supported with any affidavit of the person who had appeared on behalf of the appellant before the trial Court and has categorically stated in writing the appellants would engage a counsel and also file a written statement.

7. The lower appellate Court has very elaborately discussed the evidence showing the knowledge of the appellants regarding *exparte* judgment, it is nowhere disputed nor any explanation has been offered by the appellant that why their own employee Syed Javed Haq, who appeared in the trial on **11.05.2010** has failed to follow the suit despite the fact that he is Assistant Manager of the appellants' company. It is not denied that he is being Assistant Manager of appellants.

8. In view of the undisputed facts that Assistant Manager Syed Javed Haq had appeared before the trial Court. The plea of the learned counsel for the appellant that the trial Court has failed to appreciate that service has not been properly affected on the appellants is frivolous. It was not the case of the *exparte* decree on the first or second date after declaring the appellants *exparte*. The record shows that after filing of the statement Syed Javed Haq on behalf of the appellant the trial has given at least six more dates to the appellants on every week. Then again after receiving an e-mail on **13.12.2010** irrespective of the fact that whether Assistant Manager of the appellants has informed them or not about the case, the appellant took more than 47 days in approaching the First Appellate Court. It may be mentioned here that the copy of the impugned *exparte* judgment of the trial Court filed with this

IInd appeal does not show any date and time for making application for certified copy of the judgment in **Suit No.667/2008**. Irrespective of the fact that they have miserably failed to approach the Court in time, the appellant when knew that they were thrown out on account of limitation, the appellant should have filed copy of the true certified copy of impugned order to make out a case of limitation and period of delay to be condoned, if any.

9. In view of the above facts, no case for interference in the judgments of two courts below is made out since there was no illegality or irregularity in the judgments of the Courts below nor the decisions are contrary to law, therefore, instant IInd appeal was dismissed alongwith pending applications by short order dated **03.12.2018** and these are the reasons for the same.

JUDGE

Karachi
Dated:02.02.2019

Ayaz Gul/P.A
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