

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No.43 of 2018

Date Order with signature of Judge

Present: Mr. Justice Nazar Akbar

Applicant : Urban Community Development Council,
Through Mirza Sarfaraz Ahmed, advocate.

Versus

Respondent No.1 : Rana Tabassum Ashfaque,
Respondent No.2 : Mst. Farhat Naz,
Respondent No.3 : Muhammad Abid,
Respondent No.4 : Sub Registrar, Orangi Township,
Respondent No.5 : The Project Director, Orangi Township,
Respondent No.6 : Dy. Director (PA) Orangi Township,
Respondent No.7 : The Administrator KMC,
Respondent No.8 : The SHO (Police Station Orangi Town).

Date of hearing : **12.02.2019**

Date of judgment : **12.02.2019**

JUDGMENT

NAZAR AKBAR, J:- This Revision Application is directed against the concurrent findings. The II-Senior Civil Judge, West Karachi by judgment and decree dated **06.9.2016** dismissed Civil Suit No.443/2012 filed by the applicant and the IX-Additional District Judge, West, Karachi by judgment dated **12.12.2017** maintained the said findings of the trial Court and dismissed the Civil Appeal No.242/2017 filed against the said judgment of the trial Court being hopelessly time barred.

2. The brief facts of the case are that applicant filed civil suit No.443/2012 Declaration, Cancellation of Lease and Permanent Injunction against the Respondents stating therein that the applicant is a NGO duly registered with Social Welfare Department, City District Government Karachi on **11.12.1975** has acquired a piece of

land bearing Plot No.ST-Sector 11 admeasuring 1.55 acres, Orangi Town, Karachi (the suit property) by virtue of allotment for welfare purpose. It was averred that several shops and units were constructed by the applicants on the said plot. A portion of said plot about 600 sq. feet was let out to Respondent No.2 under a written agreement of tenancy dated **21.8.2002** on monthly rent of Rs.4000/- per month. Respondent No.2 paid the rent to the applicant till **January, 2003** and thereafter she stopped payment of rent, therefore, applicant sent legal notice dated **17.06.2005** to Respondent No.2 but the same was not replied. Respondent No.2 after some time deposited Rs.10,000/- in the bank account of the applicant towards arrears of rent and by letter dated **05.7.2007** she agreed to pay the balance arrears of rent amount to Rs.40,000/- but again she failed to deposit the same. The total rent of the tenement upto the month of May, 2012 comes to Rs.4,52,000/- out of which Respondent No.2 paid only 19,000/-. It was further averred that Respondent No.2 filed civil suit No.538/2009 against the applicant in respect of the suit property with false and frivolous lease deed dated **02.4.2008**. Respondents No.1 and 2 tried to sell and given possession of portion of suit plot to Respondent No.3 under fake and fabricated lease deed which was lease of a different plot number and even situated in a different sector number, therefore, the applicant filed complaints against Respondent No.1 to Anticorruption, KMC, Sub-Registrar, Orangi Township/ Respondent No.4 and Respondent No.7/SHO Orangi Town. Thereafter the applicant also filed said civil suit against the Respondents.

3. Notice of the said suit was sent to the Respondents and Respondents No.2, 3, 5 to 7 filed their written statement. Respondent No.2 denied the allegations leveled against her and contended that

the applicant has no title in the suit property and suit is barred under Sections 39, 42 and 56 of the Specific Relief Act. She further contended that there is no relationship of landlord and tenant between the applicant and her. Other Respondents also denied the allegations leveled against them in the suit.

4. From pleadings of the parties the trial Court has framed the following issues:-

1. *Whether the suit is not maintainable?*
2. *Whether the lease deed dated 20.04.2008, M.F Roll No.U-30004/5016 dated 07.05.2008 in favour of the defendant No.2 in respect of the Cottage Industry Plot No.C-1/71, situated in Sector 11-E, Orangi Town, Karachi is illegal, unlawful and against the norms of the justice and as such is liable to be cancelled?*
3. *Whether the plaintiff is entitled for any relief?*
4. *What should the decree be?*

5. After framing issues, the applicant was given several opportunities but he failed to adduce evidence, therefore, the case was proceeded by the trial Court under **Order XVII Rule 3** of the **CPC** and the learned trial Court dismissed the suit of applicant by judgment dated **06.9.2016**. The applicant preferred civil appeal No.3242/2017 challenging the said judgment before IX-Additional District Judge, West Karachi. The said appeal was also dismissed by judgment dated **20.12.2017** being hopelessly time barred as the same was filed with delay of 8 months and nine days. Therefore, the applicant preferred the instant Revision Application against dismissal of their suit for want of evidence and dismissal of appeal on the question of limitation.

6. I have heard learned counsel for the applicant and perused the record.

7. Learned counsel for the applicant after going through the impugned order of the appellate Court was unable to justify the delay of eight months and nine days in filing appeal by the applicant. The suit filed by the applicant was dismissed on **06.9.2016** and the applicant filed appeal against the said judgment on **15.06.2017** and no plausible explanation was given for delay in filing appeal before the appellate Court. The only contention which has been repeated before this Court was that the delay was caused on account of change of management of applicant namely Urban Community Development Council and the record of the case was missing from their office. Even this explanation as a cause for the condonation of delay was not established as the record shows that even prior to the date of dismissal of suit the new management had taken over. Strangely enough even the appeal was filed incompetently or the same was filed by an unauthorized cousin of the President of the plaintiff/ applicant organization. It was not even filed by the aggrieved party.

8. In view of the above facts and circumstances, since the appeal filed by the applicant before the appellate Court was hopelessly time barred, therefore, instant Civil Revision Application was dismissed by short order dated **12.02.2019** and these are the reasons for the same.

JUDGE

Karachi
Dated: 02.04.2019

Ayaz Gul