

IN THE HIGH COURT OF SINDH AT KARACHI

M.A No. 57 of 2017

Present

Mrs. Justice Kausar Sultana Hussain

Muhammad Amir.....Appellant.

Versus

Muhammad Sarfraz & another.....Respondents

Hearing/priority case.

1. For order on office objection as at "A".
2. For hearing of CMA No. 8208 of 2017.
3. For hearing of CMA No. 8210 of 2017.
4. For hearing of main case.

Date of Hearing 05.03.2018

Date or Order 04.06.2018

Mr. Masood Anwar Ausaf, advocate for Appellant.

Mr. Ahmed Ali Hussain, advocate for Respondent No. 1.

ORDER

Mrs. Kausar Sultana Hussain, J. :- Caption Misc. Appeal has been preferred assailing the order dated 10.7.2017, passed by the learned Intellectual Property Tribunal Sindh, Karachi in Suit No. 05 of 2017, whereby disposed off an application under Order XXXIX Rules 1 & 2 read with Section 151 C.P.C. The aforesaid appeal was presented on 18.08.2017 alongwith an application under Section 4 & 14 of the Limitation Act read with Section 151 CPC for condonation of delay in filing the appeal.

2. The learned counsel for the appellant has submitted that delay in filing the appeal is purely bonafide and not deliberate as the appellant was misled by the proper course of remedy and assailed a wrong remedy. He has further submitted that on the very same day of impugned order, an order of releasing the goods and forfeiting the

surety was also passed by the respondent No. 2, which was challenged by the appellant before Customs Appellate Tribunal on 20.7.2017 however, due to non-availability of bench of the Tribunal constrained to file Constitution Petition No. D-4793 of 2017 on 21.07.2017 before this Court. He has further argued that the appellant being misled and confused by the applicability of the Intellectual Property Act, 2012 and the Custom Act, 1969 could not file the appeal before proper forum in time, may be condoned as such delay was neither willful nor deliberate.

3. In rebuttal, learned counsel for the respondent No. 1 has strongly refuted the above submissions and contended that no sufficient reason has been given for not filing the appeal in time and the plea adopted by the appellant is a vague having no substance. He has referred Section 19 of the Act, which provided clearly the forum of appeal.

4. Considered the submissions of the learned counsel for the parties, perused the available material in the perspective of relevant provisions of law, so also case laws referred by the learned counsel for the respondent No. 1. Section 19 of the Intellectual Property Organization of Pakistan Act, 2012 envisages as follows :-

19. Appeal from Tribunal.

"Any person aggrieved by final judgment and order of the Tribunal under this Ordinance may, within thirty days of the final judgment or order of the Tribunal, prefer an appeal to the High Court having territorial jurisdiction over the Tribunal."

5. Per Section, referred supra, an express forum of appeal coupled with time period has been provided. There is no ambiguity whatsoever concerning the forum of the appeal as well as the period under which the appeal could be preferred before this Court. It may be noted that the Intellectual Property Organization of Pakistan Act, 2012 is a special law and the above provisions of the Act, itself provides limitation for

filing of the appeal, as such, it prevails over the general law of limitation. Caption Misc. Appeal under Section 19 of the Act was presented on 18.08.2017 against the order dated 10.07.2017. The appeal is admittedly having been preferred beyond the period of limitation as provided under the above statute, rather such fact having been conceded by the learned counsel for the appellant.

6. Reverting to the explanation of delay, highlighted above, same is found with no substance owing to the fact firstly it is quite far-fetched to a prudent mind that one who approached the Intellectual Property Tribunal, at Karachi while filing Suit No. 05 of 2017 for Permanent Injunction, Rendition of Accounts and Damages could be it advised or misled of forum of appeal in presence of an explicit and express forum of appeal against the order of the Tribunal. The explanation of furnished by the appellant's side that the appellant was misled of forum of appeal and so also couched being already challenged the order of same date passed by Director (South), Directorate of Intellectual Property Rights Enforcement 11th Floor, Customs House, Karachi, through Constitution Petition No.D-4793 of 2017 is neither sufficient nor adequate in the circumstances discussed above. It is noted that C.P. No. D-4793 of 2017 preferred by appellant was against the order dated 10.07.2017 preferred by the Director South, Directorate Intellectual Property Rights Enforcement, Karachi, whereas the order impugned through present Misc. Appeal is altogether passed in a different proceedings viz; Suit No. 05 of 2017 pending adjudication before learned Intellectual Property Tribunal at Karachi. In case of Muhammad Tufail Danish Versus Deputy Director F.I.A. and another (1991 SCMR 1841) it was held by the Hon'ble apex court that wrong advice of Counsel would not extend period of limitation. As regards, the next contention the delay occurred due to approaching a wrong forum could be excluded for the purpose of

limitation as provided under Section 14 of the Limitation Act, 1908. This contention found with no legal substance. In case of Khushi Muhammad through LRs and others Versus Mst. Fazal Bibi and others (PLD 2016 Supreme Court 872) the Hon'ble Supreme Court, held that Application of Section 14 of the Limitation Act, 1908 was restricted to suit only and had no direct and independent application to cases where an appeal had been filed before a wrong forum. It was also observed by the apex court that express provisions of law could not be defeated by resorting to any rule of interpretation which would have the convoluted effect of rendering an appeal a continuation of the suit for the purposes of attracting the application of section 14 of the Limitation Act, 1908. Such a view was also adopted in another case of GBPCO and others Versus Pakistan Television Corporation Ltd and others (PLD 2018 Lahore 399).

7. In the attending circumstances, application under Section 5 read with Section 14 of the Limitation Act, 1908 merits no consideration, stands dismissed. As a consequence, Misc. Appeal No. 57 of 2017 is also dismissed being barred by Limitation. Orders accordingly.

J U D G E

Faheem/PA