

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-200 of 2007

Present

Mrs. Justice Kausar Sultana Hussain

M/s. Asian Business Corporation.....Petitioner

Versus

M/s. Pakistan National Shipping Corporation & another.....respondents

Date of Hearing 07.03.2018

Date of Order 01.06.2018

Mr. Mazhar Imtiaz Lari, advocate for petitioner

Mr. Waqar Mohammad Khan Lodhi, advocate for respondent No. 1.

J U D G M E N T

Kausar Sultana Hussain, J. :- Through this Constitution Petition the petitioner M/s. Asian Business Corporation have challenged the order dated 15.01.2007 of learned District & Sessions Judge South, Karachi, passed in First Rent Appeal No. Nil of 2007, whereby while dismissing the application under Section 5 of the Limitation Act, also dismissed the appeal being time barred.

2. Relevant facts necessary for disposal of instant petition are that the respondent No. 1 namely M/s. Pakistan National Shipping Corporation had filed a rent application bearing Rent Case No. 709 of 2004 under Section 8 of the Sindh Rented Premises Ordinance, 1979 against the petitioner for fixation of the fair rent of the tenement in possession of the later. The said rent application was allowed by the learned Rent Controller-VIth South, Karachi, vide order dated 21.11.2006. Being aggrieved, the petitioner preferred First Rent Appeal No. Nil of 2007, which was dismissed by learned District & Sessions Judge South, Karachi, vide order dated 15.01.2007 is impugned.

3. The learned counsel for the petitioner at the time of argument, in fact, has not seriously challenged the findings of the learned Rent Controller on the factual controversy and only laid emphasis on the plea that the learned first appellate court did not consider the bonafide explanation for condonation of delay and erred in declining the same on surmises and conjectural. It was further contended that application under Section 5 of the Limitation duly supported by the affidavit of the petitioner explaining the reasons of delay coupled with medical certificate. He has further argued that learned appellate court failed to exercise its jurisdiction in a lawful manner and travelled contrary to law, whereas law always favours adjudication and decision on merits. He has further argued that impugned order is nullity in law, liable to be set aside and matter may be remanded to the appellate court to decide the same on merits.

4. In rebuttal the learned counsel for the respondent No. 1 has vehemently and strongly refuted the above submissions and raised legal point as to the maintainability of the application under Section 5 of the Limitation Act, into the rent matters. He has submitted that specific time period of 30 days has been provided in the ordinance for filing an appeal, therefore, no condonation of delay could be applied or condoned. He has further argued that the appeal preferred before the learned District Judge South, Karachi was not only time barred, but also the application under Section 5 of the Limitation Act was devoid of merits, rightly discarded by the learned appellate court, hence instant petition merits no consideration, liable to be dismissed.

5. After hearing arguments, I have given careful consideration to the material available on record and have gone through the impugned orders. Since the question of law has been raised concerning the applicability of Section 5 of the Limitation Act, 1908 in the rent matters,

as such, in order to appreciate the point raised by the learned counsel for the respondent No. 1, it would be advantageous to quote the section 21 of the ordinance, which speaks about its applicability. It is as follows.

Section 21. Appeal----(1) Any party aggrieved by an order, not being an interim order, made by the controller may, within thirty days of such order prefer an appeal to the District Judge having jurisdiction in the area where the premises in relation to which the order is passed.

6. The above provision of law, clearly envisages that an appeal should be preferred within 30 days before the District Court. It may be noted that the Sindh Rented Premises Ordinance, 1979 is a special law and the above provision of ordinance itself provides limitation for filing of the appeal, therefore, it prevails over the general law of limitation. It may be observed that in presence of specific time period provided in the statute, the wisdom and intention of the legislature is quite express as to avoid any contrary view drawn, therefore, section 5 of the Limitation does not applicable. I have taken assistance from the decision of the apex courts, wherein the applicability of the section 5 of the Limitation Act was not recognized with the appeal under Section 21 of the Ordinance. Reliance is placed to the case of **Haji Hussain through LRs and others Versus M.Y Kherati (2002 SCMR 343)** and **Abdul Ghafoor Versus Mumtaz (PLD 1982 S.C 88)**. Besides, above in cases of **Muhammad Ibrahim Versus Abdul Haseeb Khan (1982 CLC 2025 Karachi)**, **M.A. Qayoum Versus Mst. Roshan Sultan (PLD 1983 Karachi 417)**, **Syed Ashraf Ali Versus Abdul Rashid (1984 CLC 2632 Karachi)**, **Muhammad Anis Versus Mst. Akhtar Jehan Begum (1999 MLD 1386 Karachi)**, **Muhammad Idrees Khan Versus Ismatullah Khan and another (1999 MLD 2598 Karachi)**, **M/s. Pak. Libya Holding Company Pvt. Ltd Versus Bashir Ahmed Memon (1999 MLD 2132 Karachi)**, **Mrs. Shamim**

Bano Versus Shaikh Abid and Co. (2000 MLD 1466 Karachi). It was also held that period of 30 days for filing an appeal is provided under Section 21 of the Ordinance and as such Limitation Act, 1908 is not applicable for condonation of delay in such proceeding. In view of the above case laws, it is unambiguous that Section 5 of the Limitation Act has no applicability with the proceedings under Section 21 of the Sindh Rented Premises Ordinance, 1979. Thus, at the very outset, the application under Section 5 of the Limitation Act, filed by the petitioner/tenant before the learned first appellate court for the condonation of delay in filing of the first appeal was not maintainable.

7. Even otherwise, per record the learned Rent Controller passed the impugned order on 21.11.2006, the petitioner/tenant had applied for its certified copy on 23.12.2006 and received the copies on the same date, whereas presented the appeal under Section 21 of the Ordinance before the appellate court on 09.01.2007. It is noted that the impugned order dated 21.11.2006 was passed by the learned Rent Controller after hearing learned counsel for both the parties, meaning thereby the petitioner's/appellant's side was well aware about the proceedings before the said court. These facts already show the negligence on the part of petitioner's/appellant's side who even applied certified copy after lapse of 30 days. The petitioner/appellant in his affidavit to application under Section 5 of the Limitation Act, 1908, firstly took the plea of illness of the counsel, which was not supported by any supporting documentary proof, even without affidavit of such counsel; secondly to cover up the rest of the period, he took the plea of winter vacation suffix with his own illness. In this connection placed a medical certificate bearing no name/identity of signatory or stamp of the Doctor. Nevertheless, per certificate the rest was suggested from 04.1.2007 to 7.1.2007, as such, the petitioner/appellant was required to present the appeal before the

learned appellate court on 8th January, 2007, not did so. The learned appellate court justified in declining to accept the reasons so forwarded by the petitioner for condonation of delay. No illegality has been found in the order impugned in this petition.

8. For the reasons, recorded above, instant petition merits no consideration, stands dismissed accordingly.

J U D G E

Faheem/PA