

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Civil Revision No.188 of 2009

DATE _____ ORDER WITH SIGNATURE OF JUDGE

For hearing of Main Case.

Heard on : 16.04.2018

Date of Order : 30.07.2018

For Applicant : Muhammad Sarfaraz Sulheri, Advocate for the Applicant.

For Respondent: Muhammad Siddiq Mirza, Advocate for Respondent.

KAUSAR SULTANA HUSSAIN, J.:- This Civil Revision under Section 115 C.P.C directed against the Order dated 29.10.2009 passed by the learned IVth Additional District and Sessions Judge, Karachi (West) whereby, Civil Appeal No.113 of 2009, filed by the appellant was dismissed for want of limitation being preferred beyond the period of limitation.

2. The concise relevant facts forming background to institute instant Civil Revision are that the Respondent/Plaintiff (hereinafter referred to as "Respondent") had filed Civil Suit No.948 of 2002 against the appellant/defendant (hereinafter referred to as "Appellant") for declaration and permanent injunction claiming to be lawful lessee and occupant of the Plot bearing No.44-A Lalazar, Moulvi Tamizuddin Khan Road, Karachi and challenged the note dated 07.02.2000 alleging that such note contemplate illegal cancellation of their allotment. After service, the appellant contested the case by filing written statement wherein, denied the claim of the Respondent's side, led evidences, whereas, Appellant neither cross examined the witness of the Respondent, nor led their evidence. Finally, the learned Senior Civil Judge-II, Karachi (West), decreed the Suit in favour of the Respondent vide Judgment and Decree dated 23.08.2004. Being

aggrieved, the Appellant preferred Civil Appeal No.113 alongwith an application under Section 5 of the Limitation Act, which was subsequently transferred to learned IVth Additional District and Sessions Judge (West) Karachi. After hearing arguments of learned counsel for Appellant, learned appellate Court dismissed the application under Section 5 of the Limitation Act for condonation of delay and rejected the appeal being preferred beyond the period of Limitation vide Order dated 29.10.2009. Being dissatisfied with the said Order, the Appellant has preferred Revision in hand.

3. The learned Counsel for the Appellant contended that the impugned Order passed by the first appellate Court is outcome of an erroneous and mis-appreciation of the facts and circumstances on record. He much emphasized Order as well as Judgment/Decree passed by the learned trial Court on sheer violation of law and without appreciation of point of Jurisdiction. He has further argued that originally the Suit was instituted before the High Court, subsequently, it was transferred to the District Courts on enhancement of pecuniary jurisdiction of the lower Courts but no Limitation or Court Motion Notice was ever served upon the Appellant in this regard. Lastly, he has argued that the impugned Order suffers from material illegality, same is not sustainable in the eyes of law, may be set aside.

4. Conversely, the learned counsel for the Respondent has strongly refused the above contentions and supported the findings of the learned appellate Court. He has submitted that no illegality committed by the learned first appellate Court and passed lawful Order. While, confronting the contentions of non-service of Court Motion Notice after transfer of the case, he has argued that under the Law, it is the duty of the Litigant to get himself informed of proceedings of the case. He has further argued that no cogent reason has been assigned by the Appellant for condonation of such a long period of more than five

years, rightly rejected by the learned appellate Court. In support of his arguments, he has referred case of Syed Irshad Hussain and another vs Azizullah Khan and three others (PLJ-1987 SC-15) and another case of Javaid Siddiq vs Muhammad Javaid Umar Khan and another (2008 SCMR 1417).

5. Considered the submissions and perused the impugned Order so also available record in the perspective of relevant provisions of law. It is noted that originally the aforesaid Suit was instituted before this Court, assisted by the Appellant by filing written statement, thereafter, issues were framed by the Court posted the matter for evidence of the parties. Subsequently, on eve of enhancement of pecuniary jurisdiction of the District Courts, number of cases including instant case, transferred to the lower Court. Thereafter, the Respondent led evidence, on the contrary, the Appellant not only failed to make appearance, but also failed to cross-examine or lead their evidence, ultimately, the learned trial Court passed the Judgment and Decree dated 23.01.2004. As per record, the Appellant preferred Civil Appeal No.113 of 2009 after a period of more than five (5) years along with an application under Section 5 of the Limitation Act giving only reason of having not been served with Court Motion Notice due to which, the proceedings were not in their knowledge. Delay of each and every day is to be explained while, seeking condonation of delay filing a time barred appeal. It may be observed that the eventuality of transfer of case was not happened merely for this Suit, but there were bundles of cases transferred to District Courts due to enhancement of pecuniary jurisdiction and this fact was well known to all practicing lawyers. Nevertheless, the period of delay over more than five (5) years, which is not a simple case of no knowledge. There is nothing on record to suggest as to how the Appellant remained oblivious of the proceedings transferred from this

Court to lower Courts. Such a stand took by the Appellant is far-fetched to a prudent mind owing to the reason that it is the duty of the parties to get themselves informed of the proceedings. No iota of substance in writing has been produced with the application under Section 5 of the Limitation Act showing any plea was raised by this Court or to any corner if the Appellant was not finding the status of the case. In case of Syed Irshad Hussain and another vs Azizullah Khan & 3 others (PLJ 1987 SC 15), the apex Court while, dealing with the point of transfer of Suit on administration grounds, held that:

(i) *“Civil Procedure Code, 1908 (V of 1998)...S.24-A....Transfer of Suit..... appearance of parties on Held; it being obligatory on part of parties to get themselves informed of future date of hearing and Court where case transferred, only duty placed on Court to be to inform them so when they approach it for that purpose”.*

6. In the stated circumstances, it is abundantly clear on record that Appellant failed to furnish any plausible and sufficient reason for condonation of such an inordinate delay of more than five (5) years for filing appeal and the learned appellate Court while considering all the aspects rightly dismissed the application under section 5 of the Limitation Act coupled with the appeal preferred by limitation.

7. Reasons recorded above, the instant Civil Revision merits no consideration, stands, dismissed accordingly.

J U D G E