

ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.

Ist. Appeal No.D-26 of 2013.

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**DATE**

**ORDER WITH SIGNATURE OF JUDGE**

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For hearing of CMA-2129/17.(restoration)

23.10.2019.

Mr. Imran Ali Borano, Advocate for the appellants.

Mr. Zaheeruddin S. Leghari, Advocate for the Bank / respondent No.1.

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Throug this application, the appellants have prayed that this appeal, which was dismissed on 11.10.2017 for non-prosecution, be restored. The main ground urged in this application is that their counsel was on general adjournment on the relevant date. We are of the view that this gorund is sufficient for restoration of the appeal. Accordingly, the application is allowed as prayed and resultantly the appeal is restored to its original position.

Learned counsel for respondent No.1 points out that the appeal is barred by limitation. Record shows that the impugned decree was drawn on 19.02.2013 ; application for its certified copy was filed on 28.02.2013 ; fee was estimated on the same day, but it was deposited on 04.03.2013 ; certified copy was made ready on 04.03.2013 and was supplied / delivered on the same day ; and, the appeal was presented on 26.03.2013. The above mentioned dates show that after excluding the time consumed in obtaining the certified copy, the appeal was filed on the 35<sup>th</sup> day and not within the statutory period of 30 days provided in Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001. Learned counsel for the appellants concedes that the appeal is barred by five (05) days. He, however, requests that the delay in filing the same be condoned. We are afraid such request cannot be allowed, firstly, as provisions of section 5 of the Limitation Act, 1908, do not apply to appeals under the Ordinance of 2001, and secondly, valuable rights have occrued in favour of respondent No.1 when the appeal became barred by time, which rights cannot be taken away lightly as per the settled law.

In view of the above, the appeal is dismissed, however, with no order as to costs.

JUDGE.

JUDGE.