## ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI 1st Appeal No.64 of 2019

Date Order with signature of Judge

Before:-Mr.Justice Muhammad Ali Mazhar Mr.Justice Agha Faisal

National Bank of Pakistan ......Petitioner

## Versus

Syed Kazim Raza Rizvi & another. ......Respondents

## 06-11-2019

Mr.Ghulam Rasool, Advocate for the Appellant. Mr.Haris Rashid Khan, Advocate for the Respondent No.1

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Muhammad Ali Mazhar, J: This first appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 has been preferred against the judgment dated 6.3.2019 and decree dated 13-03-2019 passed by Banking Court No.II at Karachi in Suit No.47 of 2014 (National Bank of Pakistan vs. Syed Kazim Raza Rizvi & another). The office has raised the objection that how this appeal is within time. We have also noted that the judgment was passed on 06.03.2019 and the application for certified copy was submitted on 8.3.2019 and fee was estimated on the same day, but the cost was paid on 31.07.2019 and copy was delivered on 2.8.2019 by the Reader of the Banking Court No.II. This appeal was presented on 30.8.2019.

2. Learned counsel for the appellant submits that since copy was not ready, therefore, he could not pay the cost. On the contrary, the copy is made ready for delivery after depositing the fee. In this case the cost was estimated on

8.3.2019 but it was paid on 31.07.2019. Naturally after 31.07.2019 the copy was made ready and delivered on 2.8.2019. At the same time the respondent No.1 shown us certified true copies of judgment and decree for which he applied to the Banking Court on 13.3.2019 and the fee was estimated on the same day and he deposited the cost on 15.3.2019 and on the same day the certified true copies were delivered to him. No lawful justification has been placed by the counsel for the appellant for filing this appeal after lapse of limitation period. It is the responsibility of the court under Section 3 of the Limitation Act to consider the question of limitation through judicial notice, whether the appeal is time barred or not? Learned counsel for the respondent No.1 also made reliance on the judgment of Division Bench of this court in which one of us (Muhammad Ali Mazhar, J) was a member. Reported as 2019 CLD 659 (Pak Leather Crafts Limited & others vs. Al-Baraka Bank Limited), in which also the question of limitation was considered and it was held that once cost for certified copy had been estimated by copyist, the onus for depositing the same was on applicant and where applicant had committed delay in depositing cost for certified copy, the said applicant could not then take shelter under Section 12(5) of the Limitation Act. As such delay on the part of the applicant could not be termed as 'time requisite' for obtaining certified copy within the meaning of Section 12 of the Limitation Act.

3. As a result of above discussion, this appeal is dismissed accordingly along with pending application.

Judge

Judge