

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**II-Appeal No. 103 of 2019.**

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Date

Order with signature of Judge

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1. For orders on office objection a/w reply as at "A".
2. For hearing of CMA No. 3760 of 2019.
3. For hearing of main case.

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**07<sup>th</sup> November, 2019.**

M/s. Farhan Zia Abrar & Muhammad Rehan Qureshy, advocates for appellant.

Mr. Naeem Haider, advocate for respondents.

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**Salahuddin Panhwar, J:-** Instant appeal is against the order dated 20.04.2019, passed in Civil Appeal No. Nil of 2018, filed by the present appellant, whereby same was dismissed *solely* on the point of limitation. Paragraph No.1 of the order is that:

“From the perusal of record, it appears that the learned Presiding officer of the trial Court had decreed the suit of plaintiffs/respondents against the appellants, vide judgment and decree dated 08.03.2018 passed in Civil Suit No. 87/2015. Thereafter, the certified copies were received by appellant on 12.04.2018 and appeal was filed with the delay of 39 days on 17.04.2018 without any justification and application under Article 5 of Limitation Act, 1908. Appellant despite having knowledge of impugned judgment and decree on the day it was announced, did not take steps to file appeal within time prescribed under the law.”

2. Learned counsel for the appellant emphasis over page 69, which reflects that judgment of the trial Court was passed on 08<sup>th</sup> March 2018, whereas, he applied copy of that judgment within a week on 13.03.2018 as per endorsement cost was estimated on 26.03.2018; cost was deposited on the same date i.e. 26.03.2018 and copy was ready on 29.03.2018 and he supplied stamps on that date but received the copy after the delay around 13 days. Impugned order reflects that appeal is barred by 39 days when appeal was presented on 17.04.2018.

3. Here, it would be relevant to refer section 12(5) of the Limitation Act which reads as:-

“For the purpose of sub-sections (2),(3) and (4), the time requisite for obtaining a copy of the decree, sentence, order, judgment or award shall be deemed to be the time intervening between the day on which an application for the copy is made and the day actually intimated to the applicant to be the day on which the copy will be ready for delivery”

*Prima facie*, the intervening period needs to be excluded, however, '**time requisite**' must be shown to be having nexus with due diligence, as was observed in the case of Jamila Khatoon & another v. Mst. Tajunnisa & another PLD 1984 SC 208 as:-

“7. .... This rule only relates copies ready for delivery to be included in a list on the notice board and since prior to 28.11.1975 the copy was not ready for delivery for want of stamp, it could not be included in the list under this rule. Otherwise, apparently the appellant seems to have been aware on the aforesaid date when he supplied the stamps to the office, that the copy will be ready for delivery as soon as certification was made thereon, which is clear from the fact that he received the delivery of the copy within three days on 1.11.1975. It has been held by this Court in the case of *Fateh Muhammad v. Malik Qadir Bakhsh (1)* that time requisite for obtaining copy means only the interval between the date of application for supply of copy and the date when it is ready for delivery, but even during this interval due diligence on the part of the litigant is required by law, and no delay unless such as was caused by circumstances over which he has no control and which could not by due diligence be avoided, can form part of time "requisite" for obtaining the copy”.

4. It can *safely* be added that the time consumed in obtaining the copy needs to be excluded unless circumstances prove, *prima facie*, negligence on part of the litigant and such litigant attempts to substitute his own *negligence* under shade of said provision. It, however, need not clarify that time requisite would mean the '*interval between date of application for supply of copy and date when copy is ready for delivery*'. This term, however, shall have no nexus with act of litigant in collecting / receiving the same.

5. The perusal of the record shows that copy was applied on 13.3.2018 but cost was estimated on '**26.3.2018**' i.e after about '**13 days**'. When the cost was estimated on '**26.3.2018**' i.e after **13 days** of applying date then it *logically* cannot be presumed that during such period the copying branch was ever in a position to intimate date of delivery. Thus, such period was required to be excluded within meaning of Section 12(5) *supra*. Here, it would be relevant to mention that judgment was passed on **08.3.2018** and appeal was filed on **17.4.2018** hence, *prima facie*, the exceeding period was **09 days** and if interval period of **13 days** (when cost was assessed) is excluded, the date of presenting appeal was well within period of *limitation*.

6. *Prima facie*, the appellate court has failed to examine the above factual and legal aspects, therefore, act of appellate court in denying the benefit of section 12(5) of the Act, cannot be approved. Judgments relied by learned counsel for the respondents i.e. 2019 CLC 321 and 2011 CLC 418 speak that appellant is bound to explain the delay of even one day. There is no exception to such settled principle of law, however, the issue, involved in the matter, is entirely different. Both citations are not helpful for the respondents as documents speak itself (*res ipsa loquitur*). Accordingly, appeal before appellate court was within time, hence, impugned order is set aside; case is remanded back to the appellate Court for decision on merits.

Instant appeal is disposed of alongwith pending applications.

J U D G E

sajid