

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No. 162 of 2021

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| Date | Order with Signature of Judge |
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1. For hearing of CMA No.3897/2021 (Stay) :
2. For hearing of main case :

12.10.2021 :

Mr. Asif Ibrahim, Advocate for the appellant.
Mr. Ghulam Mustafa, Advocate for respondent No.1.
Mr. Imran Ali Jatoy, Assistant A.G., Sindh.

NADEEM AKHTAR, J. – Vide impugned order dated 03.07.2021, the appeal filed by the present appellant was dismissed by the learned appellate Court on the ground that the same was barred by limitation. Perusal of the decree dated 26.02.2021 (page 51) passed by the learned trial Court shows that the application for obtaining its certified copy was filed by the appellant on 16.03.2021, cost for certified copy was deposited by him on 17.03.2021 and the same were delivered to him on 18.03.2021 ; and, the appeal was presented by him before the learned appellate Court on 01.04.2021. The learned appellate Court has observed in the impugned order that the appeal was barred by five (05) days. However, after deducting the time consumed by the appellant in obtaining the certified copy, it appears that the appeal was barred by two (02) days.

In his application under Section 5 of the Limitation Act, 1908, for condoning the delay in filing the appeal, filed before the learned appellate Court, the appellant had stated in a vague manner that the appeal could not be filed by him within time as he was out of city due to the death of his relative. The delay of each day was not explained by him. The explanation offered by him was rejected by the learned appellate Court by observing that the appellant had not disclosed the particulars of his relative nor had he filed the death certificate of his said relative, and the proof of travel was also not filed by him. Thus, the delay in filing the appeal remained unexplained before the learned appellate Court.

Learned counsel submits that the delay in filing the appeal was not deliberate or intentional as the appellant was out of city due to death of his

relative, however, this explanation was not appreciated by the learned appellate Court while dismissing the appeal. He further submits that since there was a delay of only two (02) days, it ought to have been condoned. I am afraid this contention cannot be accepted in view of Imtiaz Ali V/S Atta Muhammad and another, **PLD 2008 S.C. 462**, wherein it was held by the Hon'ble Supreme Court that the appeal, having been filed after one day of the period of limitation, had created valuable right in favour of the respondents, and no sufficient cause was found for filing the appeal beyond the period of limitation. The delay of only one day was not condoned by the Hon'ble Supreme Court in the cited case. In the above circumstances, the impugned order does not suffer from any illegality or infirmity. Accordingly, the appeal and listed application are dismissed with no order as to costs.

JUDGE