

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 350 of 2021

Date	Order with signature of Judge
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For hearing of CMA No.350/2021 (Stay) :

For hearing of main case :

09.12.2021 :

Mr. Saathi M. Ishaque, advocate for the petitioner.
Mr. Muhammad Amin, advocate for respondent No.1.
Mr. Imran Ali Jatoi, Assistant A.G., Sindh.

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NADEEM AKHTAR, J. – Rent Case No.304/2015 filed by respondent No.1 / landlord against the petitioner / tenant for his eviction on the ground of default in payment of the monthly rent was allowed by the learned Rent Controller vide order dated 17.03.2020. Vide impugned judgment dated 01.04.2021, F.R.A. No.61/2020 filed by the petitioner against his aforesaid order of eviction was dismissed by the learned IVth Additional District Judge (Model Civil Appellate Court) Karachi Central as being barred by limitation.

2. In order to ascertain the dates relevant for computing the period of limitation, the R & P of the appellate Court were called vide order dated 01.12.2021. The record shows that the application for obtaining the certified copy of the eviction order dated 17.03.2020 passed by the learned Rent Controller was filed by the petitioner on 13.04.2020 ; the costs were estimated by the office on 15.04.2020 which were deposited by the petitioner on the same day ; the certified copy was delivered to him on 16.04.2020 ; and, the appeal was presented by him before the learned appellate Court on 01.07.2020. It is contended by learned counsel for the petitioner that the appeal was presented on 16.04.2020, but the office of the learned appellate Court did not mention the said date of presentation on the memorandum of appeal, and instead mentioned the date thereon as 01.07.2020. According to him, the above act was committed by the office in collusion with respondent No.1 in order to make the petitioner's appeal barred by limitation. He has attempted to justify this allegation by stating that the verification in the memorandum of appeal and the affidavit attached thereto were sworn on oath by the petitioner on 16.04.2020, whereafter there was no reason for him for not presenting the appeal. He contends that

as the appeal was not barred by limitation, the same ought to have been decided on merits.

3. The record of the learned appellate Court shows that the appeal was presented on 01.07.2020 and on the next day i.e. on 02.07.2020 the office of the said Court had raised three objections, including that of limitation, which were specifically noted by the office at the back of the first page of the memorandum of appeal. It was observed by the learned appellate Court in the impugned judgment that the written submissions filed by the petitioner's counsel before the said Court were silent with regard to the office objection. From the tenor of the impugned judgment, it is apparent that the office objection with regard to limitation was not addressed at all at the time of hearing, nor was it alleged or pleaded before the learned appellate Court that the date of presentation of the appeal had been manipulated by the office on its own or in collusion with respondent No.1. Moreover, not a single complaint, statement, application or affidavit in this context was filed by the petitioner or his counsel before the learned appellate Court. Likewise, no such allegation has been made in the present petition. In the above circumstances, the allegation regarding manipulation in the date of the presentation of the appeal does not appear to be genuine or bonafide. Rather, prima facie, it appears to be a malafide and desperate attempt on the part of the petitioner to seek relief in his time barred appeal.

4. The impugned judgment does not suffer from any illegality or infirmity and as such does not require any interference by this Court. Accordingly, the petition and listed application are dismissed in limine with costs of Rs.25,000.00 (Rupees twenty five thousand only) to be deposited by the petitioner within fifteen (15) days in the Sindh High Court Clinic. Office is directed to return the R & P forthwith to the learned appellate Court.

J U D G E