

pOrder Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Revision Application No. 23 of 2015

Date	Order with signature of Judge
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For hearing of CMA No.2715/2015 (Stay) :

For hearing of main case :

03.02.2022 :

Mr. Mushtaq Ahmed Chandio, advocate for the applicants.

Mr. Nadeem Ahmed Farooqui, advocate for respondents 1 to 4.

Mr. Imran Ali Jatoi, Assistant A.G., Sindh.

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NADEEM AKHTAR, J. – Suit No.400/2006 filed by the respondents against the applicants for declaration, direction and recovery of pension and other service benefits of late Syed Athar Saeed, the husband of respondent No.1 and father of respondents 2, 3 and 4, was decreed by the learned trial Court vide judgment and decree dated 31.05.2012 and 02.07.2012, respectively. The applicants filed Civil Appeal No.181/2012 against the said judgment and decree, which was dismissed by the learned appellate Court vide impugned order dated 07.01.2015 as being barred by limitation.

The record shows that the judgment was delivered by the trial Court on 31.05.2012 and the decree in pursuance thereof was drawn on 02.07.2012 ; the application for obtaining their certified copies was filed by the applicants on 17.07.2012 which were delivered to them on 09.08.2012 ; and, the appeal was presented by them before the learned appellate Court on 28.08.2012. It may be noted that the applicants had admitted the aforementioned dates in the application filed by them before the appellate Court under Section 5 of the Limitation Act, 1908, for condoning the delay in filing the appeal. The dates noted above show that the appeal filed by them was barred by four (04) days. Needless to say they were required to explain the delay of each and every day. Despite this position, it was stated by them in their said application that there was no delay on their part in filing the appeal. It appears that due to such misconception on their part they did not disclose in their said application the number of days by which the appeal was barred nor did they explain the delay of each and every day. Therefore, the delay in filing the appeal

remained unexplained before the learned appellate Court. In *Imtiaz Ali V/S Atta Muhammad and another*, **PLD 2008 S.C. 462**, 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 and as such does not require any interference by this Court. Accordingly, the Revision Application and listed application are dismissed with no order as to costs.

J U D G E