

IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No. 345 of 2018

M/s. Adamjee Insurance Co. Ltd.,Appellant

Vs.

M/s. Trustees of the Karachi Port & another.....Respondents

Present

Mr. Justice Irfan Saadat Khan.

Mr. Justice Zulfiqar Ahmad Khan.

Date of Hearing : 26.01.2022
Date of Decision : 03.02.2022
Appellant through : Mr. Taha Ali Zai, Advocate.
Respondents through : Mr. Muhammad Sarfaraz
Sulehri, Advocate.

ORDER

(CMA No. 3085/2018)

Zulfiqar Ahmad Khan, J:- This is an application under Section 5 of the Limitation Act, 1908 for condonation of delay in preferring the instant High Court Appeal which has been filed on 08.10.2018 against the judgment dated 30.07.2018 and decree dated 10.09.2018 passed by learned Single Judge in Suit No. 169 of 1981, certified copy whereof was delivered to the appellant on 12.09.2018. Admittedly the HCA is barred by 08 days.

2. Briefly stated, the appellant preferred the subject appeal against the judgment dated 30.07.2018 (“Judgment”) delivered by the learned Single Judge of this Court in Suit 169 of 1981 (“Suit”) and the decree prepared in pursuance thereof dated

10.09.2018 (“Decree”). Upon presentation of the present appeal, the office also raised an objection with regard to the limitation. Since the Limitation Act 1908 provides for filing an appeal against a decree or order of the High Court in exercise of the original jurisdiction within 20 days from the date of decree or order, learned counsel admitted that the subject appeal is timebarred. It is in this context that the Appellant filed CMA No. 3085/2018 under section 5 of the Limitation Act 1908 (“Condonation Application”), seeking the condonation of delay in filing the appeal is made.

3. It is in this backdrop that detailed arguments were led by the respective learned counsel upon the issue of whether in the facts and circumstances of the case sufficient grounds were made out to condone the admitted delay in filing of the present appeal.

4. Learned counsel for the Appellant argued that sufficient grounds were present, supported by the ratio of judgments of the Hon’ble Superior Courts, to demonstrate that the Appellant was entitled to the grant of condonation of delay. The submissions of the learned counsel may be encapsulated in the manner appearing hereunder:

- i. It was submitted that the legal counsel was preoccupied to pursue the proceedings before district courts and he was under an impression that for a civil appeal against the judgment and decree passed by learned Single Judge under section 96 CPC, the limitation is 30 days.

- ii. It was further submitted that in the bona fide belief, he filed the instant appeal within 30 days but the office raised the objection that the appeal was to be preferred within 20 days.
- iii. It was further submitted that valuable rights of the appellant are involved and any delay in filing the instant appeals was not deliberate and/or attributable to the appellant, hence the same may graciously be condoned in the interest of justice.
- iv. It was also pleaded that since the delay has been caused by misunderstanding by a counsel, courts must protect the appellant from any loss.
- v. In order to bolster his submissions, the learned counsel placed reliance on the judgments in the following cases:

PLD 1974 S.C. 22, 1995 SCMR 584, PLD 2003 S.C. 724, 2002 SCMR 416, PLD 2006 S.C. 457, 1992 SCMR 592 and 1994 SCMR 987.

5. In contrast to the submissions made as above, it was contended by the learned counsel for the Respondent No.1 that the appeal is, prima facie, timebarred and that no grounds exist for the condonation of the delay, that admittedly has been occasioned. A brief of the submissions of the learned counsel is presented herein below:

- i. It was submitted that applying the relevant provisions of Limitation Act 1908, being Article 151 thereof, the Appellant had 20 days within which to prefer an appeal, which the Appellant undoubtedly failed to do.
- ii. It was contended by the learned counsel that ignorance of law and proceedings is no ground for

condonation of delay and that preoccupation in other proceedings before sub-ordinate courts does not provide any sanction to the Appellant to flout the statutory prescription of limitation.

- iii. He further argued that it was the duty of the advocate/litigating parties to diligently proceed with every court proceedings and preoccupation in another court could not be considered as a pretext for non-compliance of statutory obligations.
- iv. It was also contended that it is trite law that a party is obliged to be vigilant and is solely culpable for the consequences of failure in respect thereof.
- v. It was thus concluded by the learned counsel that the law of limitation is statutory prescription and the same stands admittedly violated and, unless this Court is of the opinion that such violation may be justifiably condoned, it is imperative that the present appeal be dismissed on the ground of limitation alone.

6. This Court heard arguments of the respective learned counsel and reviewed the record available before this Court.

7. The fact that the appeal is time-barred is demonstrated without any doubt. It now only remains duty of this Court to determine whether sufficient ground(s) exist to condone the delay or not.

8. Per appellant's counsel that his colleague was preoccupied in proceedings before District Court and did not prefer appeal with an understanding that he had 30 days' time to prefer an appeal against the impugned Judgment & Decree, in our

humble view, mere acting under illusive impression of enlarged time does not make a sufficient cause to condone the delay. It is the considered opinion of the Court that the prescriptions of limitation are not mere technicalities, and disregard thereof would render entire law of limitation redundant¹.

9. One of the limb of submissions of learned counsel for the appellant was that Court was saddled with sacred duty to dispense justice amongst the litigating parties hence should permit the case to proceed on merits by not divulging in technicalities; to answer such submission, we would like to point out that there is no cavil to the proposition that Courts enjoy the inherent power to condone delay in cases where the delay is duly explained and justified but in the present circumstances, the Appellant is unable to justify the delay for any reason beyond his control and court cannot be party to the applicant sitting idle under impression that he had much time at his sweet disposal to prefer an appeal. It has been maintained by the honorable Supreme Court in the case of **Lt. Col. Nasir Malik versus Additional District Judge Lahore, reported as 2016 SCMR 1821**, that each and every day of delay had to be explained in an application seeking condonation of delay, and in the absence of any such an explanation, application for condonation of delay was to be dismissed.

9. With regard counsel's contention that a client must be protected by any misunderstanding or wrongdoing of a lawyer,

¹ Mehmood Khan Mahar vs. Qamar Hussain Puri & Others (2019 MLD 24) and Anwar Ali vs. Tariq Mehmood Khoso (2021 CLC 145)

it is noted that the counsel that has moved the instant application is the same who has caused the admitted delay. It is also noted that no affidavit of the applicant is even attached to support this application to inspire this court's confidence. Be that as it may, courts are bound by law and legal pronouncements. All acts have to be confined without legal boundaries. In many cases including Ghulam Hussain Ramzan Ali v. Collector of Customs (Preventive) Karachi (2015 PTD Supreme Court 107), courts have deliberated upon the issue of timebariness attributable to counsel alone and have dismissed Section 5 applications where such stance was taken. Present case hence cannot be treated with any exception.

10. Moreover, as stated earlier it is also a settled proposition of law that in time barred matter each day's delay has to be satisfactorily explained, which aspect too is totally lacking in the instant matter. Reference in this regard may be made to the following decisions:

Commissioner of Income-Tax Vs. Rais Ahmad Khan (1981 SCMR 37)

Nakuleswar Sikdar Vs. Barun Chandra Chakravorty and another (1971 SCMR 54)

Government of the Punjab through Secretary (Services), Services General Administration and Information Department, Lahore and another Vs. Muhammad Saleem (PLD 1995 SC 396)

Province of East Pakistan Vs. Abdul Hamid Darji and others (1970 SCMR 558)

The Deputy Director, Food, Lahore Region, Lahore, etc. Vs. Syed Safdar Hussain Shah (1979 SCMR 45)

Sheikh Muhammad Saleem Vs. Faiz Ahmad (PLD 2003 SC 628)

11. We were able to lay our hands on a decision given by the Hon'ble Supreme Court in the case of *Food Department, Gujranwala through its Deputy Director and others Vs. Ghulam Farid Awan (2010 SCMR 1899)* wherein it was held that:

“It is well-settled that the government functionaries are equal before the Courts. No preferential treatment can be shown to the Government/or its agencies. A stock explanation of administrative delays is normally pleaded in the condonation applications. Such explanation does not constitute a sufficient cause or a reasonable ground to be attached any weight or credibility. In fact it constitutes an admission of the guilty neglect of the concerned and thus compounds the ever existing, management inefficiency and lack of decision making in the Govt. offices. Those seeking condonation of delay are under legal duty to explain each day's delay and to show their vigilance to avoid such delays which fatally obviates a valuable remedy. Reference is made to:

(i) East Pakistan v. Abdul Hamid Darfi and others (1970 SCMR 558)

(ii) Federation of Pakistan v. Niaz Ahmad (1997 SCMR 959)

(iii) Commissioner of Income Tax v. Rais Pir Ahmad Khan (1981 SCMR 37)”

12. Similar guidelines were also given by the Hon'ble Apex Court in the following decisions:

Pakistan through Secretary, Ministry of Defence Vs. Messrs Azhar Brothers Limited (1990 SCMR 1059)

The Province of West Pakistan, Lahore Vs. Mian Noor Ahmad and others (1975 SCMR 91)

Government of Baluchistan Vs. Abdul Nabi and another (1988 SCMR 1906)

Federation of Pakistan through Secretary, Ministry of Foreign Affairs, Government of Pakistan, Islamabad and 5 others Vs. Jamaluddin and others (1996 SCMR 727)

The Inspector General of Police, Punjab through District Police Officer Vs. Abdus Salam and another (2019 CLC 1156)

13. In the case of *Chairman, District Evacuee Trust, Jhelum Vs. Abdul Khaliq through Legal Heirs and others (PLD 2002 SC 436)*

the Hon'ble Apex Court observed as under:

“4. It has been pointed out number of times that cases pertaining to Federal/Provincial Government or autonomous bodies instituted beyond limitation prescribed by law before subordinate Court, High Court and this Court without assigning any justification acceptable under the law for not approaching the Court within time and in the applications seeking condonation of delay, if filed, invariably the plea is taken that time has been spent in completion of departmental proceedings, therefore, delay may be condoned. The concerned department must know that delay of limitation in filing of proceedings can only be condoned if it is sought for on sufficient grounds otherwise in absence thereof no special indulgence can be shown to such department because it is well-settled that no preferential treatment can be offered to the Government department or autonomous bodies. Their cases have to be dealt with same manner as the cases of an ordinary litigant/citizen. In this behalf, reliance is placed on *Central Board of Revenue, Islamabad through Collector of Customs, Sialkot Dry Port, Samberial, District Sialkot and others v. Messrs Raja Industries (Pvt.) Ltd. through General Manager and 3 others (1998 SCMR 307)*, Lahore High Court, Lahore through Registrar v. *Nazar Muhammad Fatiana and others 1998 SCMR 2376*, *Federation of Pakistan through Secretary, Ministry of Foreign Affairs, Government of Pakistan, Islamabad and 5 others v. Jamaluddin and others 1996 SCMR 727*, *Pakistan through Secretary, Ministry of Defence v. Messrs Azhar Brothers Ltd. 1990 SCMR 1059* and *Government of the Punjab through Secretary (Services), Services General Administration and Information Department, Lahore and another v. Muhammad Saleem PLD 1995 SC 396.*”

14. In the case of *Collector, Land Acquisition, Chashma Right Bank Canal Project, WAPDA, D.I. Khan and others Vs. Ghulam Sadiq and others (2002 SCMR 677)*, the Hon'ble Supreme Court of Pakistan dismissed the appeal filed by the government with the delay of seven days by quoting a number of judgments of

the Hon'ble Apex Court by observing that no sufficient cause was shown in the application filed under Section 5 of the Limitation Act.

15. It is settled position that the delay may be condoned where the Court comes to the conclusion that there was sufficient cause for such condonation. However, perusal of the present application clearly reveals that core reason attributed is that the counsel had remained busy due to preoccupation in district court and was under the impression that he had 30 days to prefer an appeal, which grounds in our view are neither plausible or sufficient to justify the condition, since the appellant does not seem to have shown diligence in filing the appeal promptly and even after signing of the papers, the appeal was filed after 8 days, no case of condonation is made out.

16. The authorities cited by the Appellant are examined which are duly distinguishable in the present facts and circumstances. In view of the reasons enumerated supra the Condonation Application (CMA No. 3085/2018) is hereby dismissed.

17. As a consequence thereof the present appeal, along with listed applications, also stand dismissed, with no order as to costs, on account of being unjustifiably time barred.

JUDGE

JUDGE

Karachi
Dated 03.02.2022