

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

R.A. No. 21 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------


For orders on office objections.
For hearing of M.A. No.42/2021.
For hearing of M.A. No.185/2017.
For hearing of main case.

25-01-2021

Applicant Mst. Razia present in person.
Mr. Khadim Hussain Soomro, advocate for the respondents.
Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

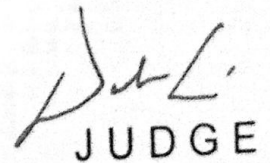
Through this Civil Revision Application, the applicants have impugned judgment delivered on 06.01.2017 and decree drawn on 12.01.2017 by learned 4th Additional District Judge Shaheed Benazirabad in Civil Appeal No.129 of 2016, whereby their said appeal was dismissed as being barred by limitation.

Relevant facts of the case are that a Suit for declaration, possession, partition, cancellation, mesne profit and injunction was filed by respondent No.1 against the applicants and other respondents which was decreed by the learned trial Court only to the extent of partition of the subject property vide judgment and decree dated 08.01.2016. The applicants impugned the said judgment and decree by filing Civil Appeal No.129 of 2016 which was dismissed by the learned appellate Court through the impugned judgment and decree. Perusal of the impugned judgment shows that it was noticed therein by the learned appellate Court that the judgment and decree were passed by the learned trial Court on 08.01.2016 ; the applicants applied for their certified copies on the very next day i.e. 09.01.2016 ; certified copies were delivered to them on the same day i.e. 09.01.2016 ; and, the appeal was filed by them on 22.10.2016 after about nine and half months of obtaining the certified copies. It appears that the applicants did not file any application before the learned appellate Court for condoning the delay in filing the appeal. The above position has not been disputed by the applicant. However, she has attempted to justify the delay by submitting that being the real mother and next friend of applicants 2 to 5 she was the only person who could file and pursue the appeal, but she was prevented from doing so because of her illness. This aspect has also been noticed by the learned appellate Court in the impugned judgment by observing that the medical certificate produced by her revealed that she was merely an out-patient and there was no material on record to establish that she was confined to bed.



It is well-settled that delay in filing an appeal cannot be condoned unless an application in this behalf under Section 5 of The Limitation Act, 1908, is filed by the appellant seeking condonation ; and, in such an event the delay of each and every day must be explained by the appellant. It may be observed that condonation of delay in filing an appeal cannot be claimed or sought by the appellant as a matter of right, and such power of the Court is purely discretionary in nature which depends upon the facts and circumstances of each case and the explanation submitted by the appellant for the delay of each and every day. In the present case, no such application was filed by the applicants, let alone the explanation of the above mentioned long delay of several months. In such circumstances, I do not find any illegality or infirmity in the impugned judgment and decree of the learned appellate Court and as such the same do not require any interference by this Court.

Before parting with this case, it may be observed that if any of the applicants 2, 3, 4 and 5 was minor at the time of filing the appeal and had subsequently attained the age of majority, he / she will be at liberty to avail his / her remedy in accordance with law without being prejudiced either with this order or the impugned judgments and decrees of the learned Courts below. With this observation, this Civil Revision Application and listed applications are dismissed with no order as to costs.


JUDGE