

Order Sheet

IN THE HIGH COURT OF SINDH KARACHI

High Court Appeal No. 93 of 2014

Date	Order with signature of Judge
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Present :

1. Mr. Justice Irfan Saadat Khan
2. Mr. Justice Nadeem Akhtar

1. For orders on CMA No.949/2014 (U/S 5 Limitation Act, 1908) :
2. For orders on office objection & reply of the appellant as at 'A' :
3. For orders on CMA No.950/2014 (Exemption) :
4. For Katcha Peshi :

Anant Kumar Parshotam Kanabar, appellant in person.

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**ORDER**

**NADEEM AKHTAR, J.** – The appellant has impugned the order passed on 25.11.2013 by a learned single Judge of this Court in J. Misc. No.04/2012, whereby the application filed by him under Section 12(2) CPC (**'the application'**), was dismissed.

2. The application was dismissed on 25.11.2013 ; and, the appellant applied on 12.12.2013 for the certified copy of the impugned order, which was made ready and was delivered to him on the same day. According to the prescribed period of limitation, the last day of filing the appeal against the impugned order was 25.12.2013. However, the appeal could have been filed on the opening day of this Court after winter holidays. Instead of filing the appeal, the appellant filed a review application on 19.12.2013 seeking review of the impugned order, which was dismissed by the learned single Judge on 24.02.2014. It is to be noted that the appellant has impugned only the aforementioned order passed on 25.11.2013, and not the order passed on his review application on 24.02.2014. This appeal was presented on 29.03.2014, when it had already become miserably barred by time. Due to this reason, the appellant filed CMA No.949/2014 under Section 5 of the Limitation Act, 1908, for condoning the delay in filing the appeal.

3. The reasons given by the appellant in his application for condoning the delay are that he was pursuing his matter in person ; he could not file the appeal within time due to lack of knowledge of law and procedure ; and, he was misguided in this behalf. The explanation / justification given by the appellant cannot be accepted. The

record clearly reflects that after obtaining certified copy of the impugned order on 12.12.2013, the appellant filed a review application on 19.12.2013 instead of filing an appeal. Not only this, he waited for the decision of his review application till 24.02.2014 when the same was dismissed, and then filed the present appeal on 29.03.2014. If the appellant was aggrieved by the impugned order, he could have very easily filed the appeal simultaneously with his review application, as in such an event his appeal would have been within time. Moreover, the remedies of appeal and review, being concurrent in nature, could have been availed simultaneously by the appellant. The so-called explanation submitted by the appellant even otherwise appears to be fallacious as the present appeal was filed by him after 33 days of the dismissal of his review application.

4. It is well-settled that, while seeking condonation of delay, the applicant has to submit explanation for the delay of each and every day, which has not been done in this case. It is also well-settled that where an appeal is not filed within time valuable rights accrue in favour of the opposite party, such valuable rights cannot be taken away unless very strong and convincing ground is shown for condoning the delay. In this context, reference may be made to Muhammad Sharif Khan and 4 others V/S Board of Revenue, West Pakistan, Lahore, 1970 SCMR 76 and Imtiaz Ali V/S Atta Muhammad and another, PLD 2008 Supreme Court 462. In Imtiaz Ali (supra), it was held by the Hon'ble Supreme Court that the appeal, having been filed after one day of the prescribed period of limitation, had created valuable right in favour of the respondents, and as such even the delay of only one day was not condoned by the Hon'ble Supreme Court as no sufficient cause was found for filing the appeal beyond the prescribed period of limitation.

5. In view of the above discussion, CMA No.949/2014 filed by the appellant for condoning the delay in filing this appeal, is liable to be dismissed. Resultantly, the appeal is also liable to be dismissed. These are the reasons of the short order announced by us on 14.05.2014, whereby this appeal was dismissed in limine with no order as to costs along with the listed applications.

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