

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision Application No.128 of 2016

Date	Order with signature of Judge
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For Katcha Peshi :

Syed Imtiaz Ali Shah, advocate for the applicants.

Syed Zafar Ali Shah, advocate for respondent No.1.

Mr. Ahmed Ali Shahani, A.A.G.

Date of hearing : 24.11.2017 :

ORDER

NADEEM AKHTAR, J. – The applicants have impugned order dated 11.11.2016 passed in Civil Appeal No.Nil/2016 by learned IInd Additional District Judge Ghotki whereby the application filed by them in their said appeal under Section 5 of the Limitation Act, 1908, was dismissed, and resultantly their appeal was also dismissed as being barred by time.

2. Relevant facts of the case are that F.C. Suit No.30/2013 filed by respondent No.1 against the present applicants and official respondents for declaration, mesne profits, possession and mandatory and permanent injunction was decreed by the learned trial Court as prayed with costs vide judgment dated 11.11.2015 and decree dated 14.11.2015. The said judgment and decree were challenged by the applicants through the above mentioned appeal and since the appeal was barred by time, they filed an application therein for condoning the delay. Through the impugned order, the learned appellate Court dismissed the said application filed by the applicants and also dismissed their appeal on the ground of limitation.

3. Perusal of the application filed by the applicants for condoning the delay shows that it was supported by the affidavit of only one applicant / appellant viz. Yameen (applicant No.1), and the only ground urged therein was that he became ill on 20.11.2015 and as such could not inform the other applicants / appellants regarding the decree passed against them and also could not give instructions in this behalf to their counsel. It is pertinent to note that the Suit was decreed against the applicants on 11.11.2015 and thus applicant No.1 became ill admittedly nine (09) days after passing of the decree. No explanation whatsoever was given by him for not taking any steps for challenging the judgment and decree during the said nine (09) days and or for not informing the

other applicants / appellants about the decree passed against them. He had also not disclosed the exact date of his recovery or the date when he became aware of the decree or the date when the other applicants were informed by him about the decree.

4. In addition to the above it is important to note that the application for condoning the delay and affidavit in this behalf were filed only by applicant No.1 and the other two applicants did not file any such application or affidavit before the learned appellate Court. Thus, there was no application from applicants 2 and 3 before the learned appellate Court for condoning the delay with a valid justification for not keeping the track of the proceedings before the trial Court, or on the ground that they were informed about the decree by applicant No.1 on a particular date before which they were not aware about the decree. It is well-settled that party seeking condonation of delay is required to explain the delay of each and every day and if a valid and convincing explanation of each and every day's delay is not submitted by him, he is not entitled to the discretionary relief of condonation. It is also well-settled that condonation cannot be sought as a matter of right. To my mind, the applicants did not comply with the above requirement of law in the present case and the contents of the application for condoning the delay filed by applicant No.1 were vague and general in nature ; whereas, no such application was filed by the other two applicants.

5. Perusal of the impugned order shows that the application for condoning the delay and the appeal filed by the applicants were dismissed on the ground that the appeal was barred by 251 days and such long delay had not been explained or justified by the applicants, and applicant No.1 did not file any document along with his application in support of the assertion that during the entire said period of 251 days he was unable to contact his counsel and the other applicants for filing the appeal. In view of the above discussion, I am of the considered view that findings of the learned appellate Court do not require any interference by this Court and this revision application is liable to be dismissed.

Foregoing are the reasons of the short order announced by me on 24.11.2017 whereby this Civil Revision Application was dismissed leaving the parties to bare their own costs.

J U D G E