

Judgment Sheet

THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Revision Application No. 140 of 2015

Applicant : Asghar Ali,
through Mr. Muhammad Ramzan Advocate.

Respondent : Muhammad Ismail,
through Mr. Shamshad Narejo Advocate.

Date of hearing : 06.12.2019.

J U D G M E N T

NADEEM AKHTAR, J. – Through this Revision Application, the applicant has impugned order dated 16.06.2015 passed by learned IIIrd Additional District Judge Dadu, whereby the application filed by him for restoration of his application for condoning the delay in filing Civil Appeal No.Nil/2014 and the said appeal, was dismissed.

2. Relevant facts of the case are that First Class Suit No.76/2011 was filed by the respondent against the applicant for declaration, possession and mesne profits in respect of a share in S.No.100 in Deh Pir Tarho Rayati, Tappo Purano Dero, Taluka Dadu. Vide judgment and decree dated 24.02.2014 and 03.03.2014, respectively, the respondent's above Suit was decreed as prayed, except in respect of the land situated in the Muhag of the suit land which was held to be the Government property. Against the said judgment and decree, the applicant filed an appeal which was admittedly barred by limitation as he had filed an application therein for condoning the delay. The above application for condoning the delay as well as the appeal filed by the applicant were dismissed for non-prosecution by the learned appellate Court vide order dated 07.02.2015. Thereafter, the applicant filed an application for restoration of his said application and appeal, which was dismissed by the learned appellate Court through the impugned order.

3. Before discussing the restoration application filed by the applicant and the impugned order passed thereon, it may be observed that the application filed by him for condoning the delay in filing the appeal was vague as no valid explanation was disclosed therein by him nor did he explain the delay of each and every day. It is well-settled that in the absence of the above, delay cannot be condoned. Therefore, his said application and the appeal were liable to be dismissed in any event.

4. While dismissing his restoration application, it was observed by the learned appellate Court that no proof was filed by him in support of his above contention ; he could have appeared after his duties as the Court timings were up till 03:00 p.m. ; if he was unable to appear due to any reason, he could have sent an intimation in this behalf or his counsel could have attended the matter ; and, the above shows that he had taken the matter very lightly. While seeking restoration of his above application and the appeal, the applicant was required to disclose valid and justifiable reasons / grounds for not appearing before the Court on the relevant date and or the reasons / grounds that had prevented him from appearing on the relevant date. Perusal of his application for restoration shows that the same was vague and the only ground urged therein by him was that he could not attend the Court on the relevant date as he was serving as a teacher.

5. In view of the above, I agree with the findings of the learned appellate Court that the applicant had miserably failed in making out a case for restoration of his application and appeal. Needless to say a litigant has to be vigilant in pursuing his case and in case of dismissal of the case for non-prosecution, he cannot claim its restoration as a matter of right. Restoration of a case is a matter of discretion and the discretion has to be exercised by the Court keeping in view the conduct of the party and the reasons / grounds urged by him in his application for restoration. Therefore, the impugned order does not require any interference by this Court.

6. Foregoing are the reasons of the short order announced by me on 06.12.2019, whereby this Revision Application and the stay application pending therein were dismissed with no order as to costs.

J U D G E