

Judgment Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Application No.21 of 2010

Applicant : Market Committee Hyderabad,
through Mr. Irfan Ahmed Qureshi Advocate.

Respondents : (1) Haji Abdul Karim through Mr. Ayaz Karim Advocate.
(2) Director, Agricultural Market Hyderabad,
(3) Deputy Director, Agricultural Marketing Building,
Hyderabad, and (4) Province of Sindh, through
Chaudhry Bashir Ahmed, Assistant Advocate General Sindh,
Hyderabad.

J U D G M E N T

NADEEM AKHTAR, J.— Through this Civil Revision Application, the applicant has impugned the order passed on 12.01.2010 in Civil Appeal No.257/2009 by the learned 1st Additional District Judge, Hyderabad, whereby the application filed by the applicant under Section 5 of the Limitation Act, 1908, for condoning the delay in filing the aforesaid appeal, was dismissed, and the said appeal was also dismissed as being barred by limitation.

2. The relevant facts of the case, as averred by the applicant, are that respondent No.1 filed F.C. Suit No.398/1999 against the present applicant and respondents 2 to 4 in the Court of IVth Senior Civil Judge, Hyderabad, for declaration, possession, mesne profits and permanent injunction. By judgment delivered on 19.10.2009, the learned trial Court decreed the Suit of respondent No.1 in terms of his prayers (a), (b), (c) and (e) with no order as to costs. The judgment was followed by a decree drawn on 27.10.2009. Being aggrieved with the said judgment and decree, the applicant filed Civil Appeal No.257/2009 on 08.12.2009 before the learned District Judge, Hyderabad, which was transferred to the Court of the learned 1st Additional District Judge, Hyderabad. Along with the appeal, the applicant filed an application under Section 5 of the Limitation Act, 1908, praying that the delay in filing the appeal be condoned. On 09.12.2009, the learned appellate court ordered that the appeal be admitted and registered, subject to legal objection on the point of limitation. Through his counter affidavit, respondent No.1 strongly opposed the applicant's application for condoning the delay. After hearing the learned counsel for the parties, the learned appellate court, through the impugned order, dismissed the application for condoning the delay, and also dismissed the appeal as being barred by limitation.

3. Mr.Irfan Ahmed Qureshi, the learned counsel for the applicant, submitted that the judgment and decree passed by the learned trial court were not within the knowledge of the applicant, as the applicant's counsel did not inform the applicant about the fate of the Suit ; and, as soon as the applicant came to know about the judgment and decree, the applicant obtained certified copies thereof and sought permission from the competent authority to engage a counsel in order to challenge the same. He further submitted that the delay in filing the appeal was neither intentional nor deliberate, but was due to the negligence and omission on the part of the applicant's counsel. It was contended that valuable rights of the Government were involved in the disputed property, therefore, the delay in filing the appeal ought to have been condoned by the learned appellate court. Further submissions of the learned counsel were that the applicant's appeal was dismissed on the basis of a mere technicality and not on merits ; the superior courts have consistently held that cases should be decided on merits rather than on technicalities ; after admission and registration of the appeal, the delay stood automatically condoned ; the explanation given by the applicant for the delay in filing the appeal, was not appreciated by the learned appellate court ; by not condoning the delay, the illegality committed by the learned trial court has been allowed to remain in the field ; and, the learned appellate court also did not appreciate that valuable rights of the Government were involved in the property in question. In the end, it was urged that this Court has inherent powers to condone the delay by setting aside the impugned order.

4. Mr.AyazKarim, the learned counsel for respondent No.1, vehemently opposed the submissions made by the learned counsel for the applicant as well as the grounds urged in this revision application. He submitted that the applicant was obliged to explain in his application the delay of each and every day, which was not done ; and, the so-called explanation tendered by the applicant was vague in nature. It was urged that the delay could not be condoned on the ground that the judgment and decree passed by the learned trial court were not brought to the notice of the applicant by its counsel. It was further urged that the applicant was responsible for the acts and omissions of its counsel. The learned counsel argued that the application for condoning the delay and the appeal were rightly dismissed in the above circumstances.

5. I have heard the learned counsel for the parties at length, and have also examined the material available on record. It is a well-established principle of law, which has been consistently held and followed by the Superior Courts, that parties are bound by the acts and omissions of their counsel, and in case of any negligence on the part of the counsel, the parties cannot claim that they

are not to be held responsible, nor does any negligence on the part of the counsel absolve the parties from prosecuting or defending the matter. In this context, reference may be made to the case of Zulfiqar Ali V/S Lal Din and another, 1974 SCMR 162, wherein the Hon'ble Supreme Court was pleased to hold *inter alia* that mere fact that a litigant engaged a counsel on his behalf did not absolve him of all responsibilities ; it was as much his duty as that of the counsel engaged by him to see that the case was properly and diligently prosecuted ; and, if he engaged a counsel who was lacking in his sense of responsibility to the Court, it was he who should suffer and not the other side. The cited case of Zulfiqar Ali supra was followed by an Hon'ble Division Bench of this Court in the case of Zahid Ahmed V/S Deputy Director Adjudication and 2 others, PLD 2006 Karachi 252. The explanation / justification given by the applicant that the judgment and decree passed by the learned trial court were not communicated to it by its counsel ; and, there was no deliberate or intentional delay on the part of the applicant, cannot be accepted. Similarly, the submissions made on the same lines by the learned counsel for the applicant, are not tenable.

6. Regarding the contention of the learned counsel for the applicant for condoning the delay, the record shows that the decree was drawn by the learned trial court on 19.10.2009, and the applicant applied for its certified copy on 03.12.2009, which was made ready and delivered on the same day. Thus, the application for obtaining the certified copy of the decree was filed by the applicant when the prescribed limitation for filing the appeal had already expired on 18.11.2009. The appeal, which was filed by the applicant on 08.12.2009, was barred by nineteen (19) days. It is to be noted that the appeal was filed by the applicant after five (05) days of obtaining the certified copies from the learned trial court. If the justification given by the applicant for the delay prior to 03.12.2009 is accepted, even then the said delay of five days in filing the appeal was not explained at all by the applicant. 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 was admittedly not been done in this case. It is also well-settled that where an appeal is not filed within time and 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 the case of Muhammad Sharif Khan and 4 others V/S Board of Revenue, West Pakistan, Lahore, 1970 SCMR 76, it was held by the Hon'ble Supreme Court that even if counsel was at fault, the other side could not be deprived of valuable right accrued to him by lapse of time. In Imtiaz Ali V/S Atta

Muhammad and another, **PLD 2008 Supreme Court 462**, it was held by the Hon'ble Supreme Court that the appeal, having been filed after one day of the period of limitation, had created valuable right in favour of the respondents. In the last cited authority, 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 period of limitation.

7. As far as the contention of the learned counsel for the applicant that the delay ought to have been condoned as valuable rights of the Government were involved in the property in question, is concerned, it is now well-established that the Government or its functionaries are not entitled to any preferential treatment where the question of limitation arises. In the above context, I would like to refer to the following cases :

- A. In the case of Muhammad Bashir & another V/S Province of Punjab, **2003 SCMR 83**, the Hon'ble Supreme Court was pleased to hold in paragraph 5 at page 87 that “*We are in no manner of doubt in reiterating and reaffirming the well-settled principle that public functionaries are not entitled to any preferential treatment in the matter of condonation of delay and they are to be treated on equal footing with an ordinary litigant. There is also no cavil with the proposition that with the passage of time a valuable right accrues in favour of the opposite party, which should not be slightly disturbed and destroyed*”.
- B. In Pakistan Handicrafts, Sindh Small Industries Corporation, Government of Sindh V/S Pakistan Industrial Development Corporation (Pvt.) Ltd. and two others, **2010 CLC 323**, it was held by this Court that limitation is not a technicality because it confers very valuable rights as held by the Hon'ble Supreme Court in the case of Imtiaz Ali (supra).
- C. In Lahore Development Authority V/S Messrs Sea Hawk International (Pvt.) Ltd., Lahore, **2003 CLC 269**, it was held by the Lahore High Court that it is a settled principle of law that the Government statutory bodies are at par with the general public.

8. In view of the law laid down by the Hon'ble Supreme Court, the delay in filing the appeal by the applicant could not be condoned merely on the ground that purported rights of the Government were involved in the property in question. The authorities of the Hon'ble Supreme Court discussed above are very clear on the points that the Government and its functionaries are not entitled to any preferential treatment in the matter of condoning the delay ; they

are to be treated on equal footing with an ordinary litigant ; and, valuable rights accrued in favour of the other party with the passage of time cannot be disturbed. In view of the above and also as the applicant had admittedly not explained the delay of each and every day, the application filed by the applicant for condoning the delay as well as the appeal, were rightly dismissed by the learned appellate court. Therefore, the impugned order does not call for any interference by this Court.

Foregoing are the reasons of the short order announced by me on 16.01.2013, whereby this Civil Revision Application was dismissed.

J U D G E