

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No.103 of 2020

Syed Hashmat Ali and others APPLICANTS.

Versus

Syed Azmat Ali and others RESPONDENTS.

Date of hearing: 13.05.2022

Date of decision: 13.05.2022

Mr. Muhammad Nisar, advocate for applicants.

ORDER

MUHAMMAD SHAFI SIDDIQUI, J. A suit for declaration, mesne profits and possession filed by applicants was dismissed on merit in consideration of evidence available. The applicants preferred an appeal on 22.09.2017 however it kept pending without court fee till passing of the impugned order dated 10.01.2020. Since no court fee was annexed with the memo of appeal despite lapse of almost five years the appeal was dismissed / rejected u/o 7 Rule 11 CPC being devoid of any court fee required to be attached. Relevant part of appellate court's order is reproduced as under :

“According to the above mentioned facts the time was granted to the Appellant/plaintiff to deposit the court fees, it was prime duty of the learned counsel or the Appellant/plaintiff to deposit court fee within time or today i.e. 10-01-2020, Appellant/plaintiff and his counsel called absent neither any intimation nor any application received on their behalf. It is pertinent to mention here that after filing the instant appeal, it was duty of the appellant/plaintiff as well as his counsel to submit the requisite court fee stamps but they failed to do so despite of fact the plaint of the suit bears the court fees stamp of Rs 15000/, hence under the law the appellant is required to pay the same court fees upon memo of appeal as affixed on the plaint.

In view of the above discussion, it is established that the appellant/plaintiff has miserably failed to submit court fee stamps in the instant appeal. It is settled principle of law that if the appellant/plaintiff failed to make good payment of court fee within specified period, the plaint should be rejected while in the instant case sufficient time has already been given to the appellant/plaintiffs. In this regard, I am fortified case law reported as

PLD 1994 Lahore 261 (Safdar Khan Vs. Ch. Muhammad Saleem and 2 others) relevant portion of which is reproduced hereunder:-

2. The applicants then preferred this revision application on 10.04.2020 after more than 90 days and that too without any court fee. It remained pending for about two years and is being heard today. Only contradictory excuses were made by the applicants' counsel that he was a pauper and because of the pandemic situation he could not deposited the court fee. These excuses are not convincing in terms of the evidence as one of the applicants is owner of a valuable property at Tariq Road Karachi. Secondly the applicants are making efforts to file the civil appeal and revision application and engaging a counsel yet they are not inclined to deposit the court fee. Even this revision application is pending since April 2020 without any court fee. Affidavit in support of such application is absolutely silent and is not convincing.

3. Applicants failed to inspire confidence and this revision application is dismissed.

JUDGE