

## IN THE HIGH COURT OF SINDH AT KARACHI

HCA No.46 of 2017

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Fahim Ahmed Siddiqui

Trustees of the Port of Karachi & another.....Appellants.

Vs.

Maqbool Ahmed Solangi.....Respondent.

Date of hearing : 30.09.2019.

For the appellants : Mr. Muhammad Sarfaraz  
Sulhery, Advocate.

For the respondent : Nemo.

### **J U D G M E N T**

**IRFAN SAADAT KHAN, J.** This High Court Appeal has been filed against the judgment and decree dated 30.09.2016 and 27.10.2016, respectively, passed by the learned Single Judge of this Court in Suit No.382 of 2011.

2. At the very outset the learned counsel was directed to explain the laches, as the appeal appears to be hopelessly time barred.

3. Mr. Muhammad Sarfaraz Sulhery Advocate has appeared on behalf of the appellants and stated that so far as the issue with regard to time barred is concerned he has filed an application under Section 5 of the Limitation Act (CMA No.195 of 2017) in this behalf. He was directed to address the Court on this legal flaw first. He stated that the matter was fixed for hearing on 30.09.2016 on which date the learned Judge announced that he will pass the order and that he kept waiting and since 30.09.2016 was a Friday he thought that the order would be passed in due course of time. However, later on he came to know that a judgment comprising of as many as nine pages was passed by the learned Single Judge on the very date i.e. 30.09.2016 and the file was sent to D-I Branch on 03.10.2016. He stated that the decree in the instant matter was prepared on 27.10.2016 and that when he came to know about the judgment and decree on 30.11.2016 he immediately applied on 30.11.2016 for certified copy which, however, was provided to him on 29.12.2016 and on the very date i.e. 29.12.2016 he preferred the appeal.

4. Nobody has appeared on behalf of the respondent.

5. The matter has been heard and record has been perused.

6. Perusal of the record reveals that the matter was heard by the learned Single Judge on 30.09.2016 and on the very date he passed the judgment. It is also an admitted position that the file of the matter reached the Branch on 03.10.2016 i.e. on Monday, as 01.10.2016 and 02.10.2016 were Saturday and Sunday, respectively. The decree in the

matter was duly prepared on 27.10.2016. It is an admitted position that the appellants applied for the certified copy as late as on 30.11.2016 i.e. much beyond the limitation period as provided under Article 151 of the Limitation Act, 1908, which clearly provides filing of appeal within 20 days' time. The record also reveals that the learned Single Judge has passed the judgment on the very date when he heard the matter. Hence, the objection of the learned counsel for the appellants that it is hardly believable that nine pages judgment could be passed on the very date when it was heard is misconceived. This, in our view, shows efficiency on the part of the learned Single Judge that he has passed the judgment comprising of nine pages on the very date when he heard the matter. The assertion raised by the learned counsel for the appellants that passing of nine pages judgment on the very date when the matter was heard is hardly believable in fact carries no force and weight. Is the learned counsel questioning the capability or the efficiency of the learned Single Judge? which we cannot permit him to do so. As stated earlier, passing of the judgment on the very date when the matter was heard, in our view, shows his efficiency and the zeal to dispose of the matter in a timely manner without any delay hence on this aspect we find no force in the arguments advanced by Mr. Sulhery.

7. Perusal of the record also reveals that it is an admitted position that the decree was prepared on 27.10.2016 and if the limitation is counted even from that period, the matter stood time barred on 17.11.2016 hence the stance taken by the learned counsel that he came to know about the matter on 30.11.2016 is beyond comprehension. It

is further noted that when the appellants themselves admit that the learned Judge stated on 30.09.2016 that he will pass appropriate order /judgment, were they not required to either enquire from the office or from the Reader of the Judge about the fate of the matter heard on 30.09.2016? This clearly shows that proper care and caution was not taken by the appellants as when they knew that the learned Single Judge has categorically stated that he will pass an appropriate order they should have been cautious enough to pursue the matter for ascertaining as to what order /judgment has been passed by the learned Single Judge but we are afraid the same has not been done and the appellants kept mum for the reasons best known to them and made no effort whatsoever to pursue the matter in a timely manner.

8. It is a settled proposition of law that law helps the vigilant and not the indolent and after the expiry of the limitation period a vested right is always created in favour of the other side and once limitation starts it could only be condoned after considering valid and cogent reasons for the same. Matter has been examined minutely by us, however, unfortunately the factors for condoning the delay are totally lacking in the instant matter. It is also a settled proposition of law that delays are condoned when reasonable and plausible reasons for the same are given but a perusal of the affidavit and the application clearly demonstrate that neither plausible reasons nor justification have been given for filing the appeal late, rather, there is, in fact, no ground either in the affidavit or in the application justifying the cause of delay. It is also a settled proposition of law that it is the bounden duty of the Court to dismiss a lis before it if the same is barred by

limitation and no plausible explanation has been furnished, with regard to such delay. We need not to cite decisions or case law on the above legal propositions since the same are quite settled by now.

9. We, therefore, in view of what has been observed above, do not find any justification to allow the application for condonation of delay (CMA No.195 of 2017) for filing the appeal, which is found to be hopelessly barred by limitation, hence dismissed. Since the said application has been dismissed, the instant High Court Appeal also merits no consideration, which is, accordingly, dismissed alongwith the pending application, if any.

JUDGE

JUDGE

Karachi:

Dated: \_\_\_\_\_.