ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP.No.S-788 of 2018.

Date Order with signature of Judge

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1. For hearing of CMA No. 7498 of 2017.
2. For hearing of CMA No. 4478 of 2017.
3. For hearing of CMA No. 7377 of 2016.
4. For hearing of main case.

Date of hearing 04th December 2019

Syed Jamil Ahmed, advocate for petitioner.
Mr. Ghulam Abbas Pishori, advocate for respondent No.1.

Salahuddin Panhwar,J:- Through the instant petition, the petitioner [tenant] has challenged the impugned judgment dated 07.03.2018 passed in FRA No. 205/2009, whereby the learned Additional District Judge-Vth Karachi Central while allowing the said FRA set aside the order of the II-Rent Controller, Karachi Central in Rent Case No.291 of 2007 and directed the petitioner [tenant] to vacate the demise shop and hand over the peaceful possession thereof to respondent [landlord] within the time stipulated therein. Hence this petition.

2. Heard learned counsel for the respective parties.

3. At the outset, learned counsel for the petitioner, *inter alia*, has contended that appeal was time barred and appellate Court failed to consider this aspect and allowed the appeal without any cogent reason.

4. In contra, learned counsel for the respondent contended that the order on eviction application was passed on 24.10.2009, whereas respondent moved application on 26.10.2009, copy of the order was delivered on 02.11.2009 and filed appeal on 01.12.2009. Further he contends that in fact application was moved on the second day of order and copies were received after one month, hence, appeal was within time. However, it was the bonafide of learned counsel for the respondent who applied afresh for the order passed by Rent Controller. Besides impugned order pertains to the merits of the case, as appellate court has

mentioned that "*trial Court did not considered the evidence brought on record in respect of default in payment of electricity of shop in question as well as personal need of appellant".*

5. The order, *prima facie,* has been challenged on two counts i.e ***'appeal was time barred'*** and that ***'order has no reasoning'.*** I would take the *first* one first. The section 12(5) of Limitation Act, *itself,* excludes the time ***requisite for obtaining a copy'***. Once, it is, *prima facie,* evident that such intervening period does not reflect any indolence on part of the party, applying for copies, then it would not be within *safe administration of justice* to knock such party out merely for default on part of copying branch. Reference is made to case of *Jamila Khatoon & another v. Mst. Tajunnisa & another* PLD 1984 SC 208 wherein it is held as:-

> "7. ….. This rule only relates copies ready for delivery to be included in a list on the notice board and since prior to 28.11.1975 the copy was not ready for delivery for want of stamp, it could not be included in the lit under tis rule. Otherwise, apparently the appellant seems to have been aware on the aforesaid date when he supplied the stamps to the office, that the copy will be ready for delivery as soon as certification was made thereon, which is clear from the fact that he received the delivery of the copy within three days on 1.11.1975. It has been held by this Court in the case of *Fateh Muhammad v. Malik Qadir Bakhsh (1)* that time requisite for obtaining copy means only the interval between the date of application for supply of copy and the date when it is ready for delivery, but even during this interval due diligence on the part of the litigant is required by law, **and no delay unless such as was caused by circumstances over which he has no control and which could not by due diligence be avoided, can form part of time "requisite" for obtaining the copy**".

6. With regard to limitation, learned counsel for the respondent has referred affidavit with statement of respondent No.1 [appellant in appeal] before the appellate court, which is available in the R&Ps at page No.15 wherein paragraph No. 6 is relevant, which is as under:-

> *"6. The memo of Appeal was presented by my Advocate on 1st December, 2009 as 27th, 28th, 29th, and 30th November 2009 (Friday, Saturday, Sunday and Monday) were holidays on account of Eid-ul-Azha declared by the Government and also notified by the Registrar, High Court of Sindh at Karachi, under Gazette Notification No.SAZ/XVIII.3(IV) on 23rd*

> *November, 2009. Copy of the Gazette Notification is annexed and marked "A"."*

Alongwith affidavit he has submitted judgment dated 24.10.2009 recorded by the learned Rent Controller in Rent Case No. 290 of 2007, which shows that on 26.10.2009 copy was applied; fees was assessed on 26.10.2009; cost was deposited on the same date i.e. 26.10.2009 whereas copy was ready on 31.10.2009 and stamps were supplied on 02.11.2009; copies were certified on 02.11.2009 as well provided on 02.11.2009, whereas, FRA was filed on 01.12.2009. These, *prima facie,* show that copy was delivered on **02.11.2009** hence appeal, filed on **01.12.2009** can't be said as ***time barred.*** In such circumstances, plea of respondent that the judgment, annexed with the appeal, was bonafide mistake (wherein date of moving application is 26.11.2009 and all formalities were completed on the same day as well the copy was delivered on the same day), needs to be appreciated because *second* application for copy can't be said to have been moved for any *ulterior* motives including getting *extension* in time. It is worth to mention here that when two probabilities are there then one, tilting favour of adjudication on merits, needs to be given weight. This aspect was also rightly adjudicated by the learned appellate Court, which, shall stand evident from *direct* referral to such portion of the judgment of appellate Court. The relevant reads as under:-

> "The learned counsel for the respondent has argued that the appeal is time barred because order for dismissal of ejectment application was passed on **24.10.2009 and appellant filed appeal on 01.12.2009**. According to him each and every date should be explain by the appellant for not filing FRA within stipulated period.
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> In this context this court has noted certain points. The learned counsel who filed ejectment application submitted application for certified copy of **26.10.2009, cost was paid on the same day, copy was ready on 31.10.2009 and the same was delivered on 02.11.2009 but FRA was not filed on the basis of said certified copy**. From the record it transpires that another advocate filed application for certified copy from the side of appellant on 26.11.2009 and on the same day the said copy was received. On the basis of said certified copy of order dated 24.10.2009 present FRA was filed.
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> It is not out of place to mention here that courts are bound to do justice and while deciding the case on merit, the technicalities should be overlooked. It is important to note that FRA No.205/2009 was filed in the court of Honourable District Judge, Karachi Central on 01.12.2009 and the same was transferred in the court of learned 1st Additional District Judge, Karachi Central who

> raised point of limitation in filing appeal. On 08.01.2010, application for condonation of limitation was filed. The said application was still pending till 25.11.2010. On 25.11.2010, the learned counsel for the appellant filed statement described the time for obtaining certified copy dated 26.10.2009. The said statement was kept on record as the same will be decided at the time of deciding appeal. On the same day the application for condonation of limitation dated 08.01.2010 was disposed of as not pressed. Thereafter, on 25.11.2010, FRA No. 205/2009 was admitted. The point of limitation had already been decided by the learned 1st Additional District Judge, Karachi Central in his judgment dated 19.12.2011.
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> According to the direction of Honourable High Court of Sindh, the learned advocate for the appellant filed gazetted notification along with affidavit which shows that from 27 November-2009 till 30 November-2009 government declared public holidays."

7. Now, before taking the second ground, I can't help myself in insisting that in our procedural law *(civil)* , judgment as defined in Section 2(9) of Code of Civil Procedure means *"the statement given by the judge of the grounds of a decree or order'.* A judgment must supply adequate reasons for the conclusion reached and arrived at and should be reflective of application of proper judicial mind by the Judge and it should not be a mechanical and not speaking judgment in nature. Guidance is obtained from case of ***MFMY Industries Ltd. v. Federation of Pakistan 2015 SCMR 1549*** wherein it is held as:-

> 5. Termination of a *lis* undoubtedly is through a verdict of a court which is a **decision** disposing of a matter in dispute before it (the Court) and in legal parlance, it is called a **JUDGMENT' .** It is invariably known that a Judge finally speaks through his judgment. According to Black's Law Dictionary, a judgment has been defined to mean ***'A court's final determination of the rights and obligations of the parties in a case'*** and per Henry Campbell Black, A Treatise on the Law of Judgment *'An action is instituted for the enforcement of a right or the redress of an injury. Hence a judgment, as the culmination of the action declares the existence of the right, recognizes the commission of the injury, or negatives the allegation of one or the other. But as no right can exist without a correlative duty, nor any invasion of it without a corresponding obligation to make amends, the judgment necessarily affirms, or else denies, that such a duty or such a liability rests upon the person against whom the aid of the law is invoked.'* These definitions are adequately self-explanatory. In our procedural law *(civil)* , judgment as defined in Section 2(9) of Code of Civil Procedure means *"the statement given by the judge of the grounds of a decree or order'.* It should be emphasized here that a judgment should supply adequate reasons for the conclusion reached and arrived at and should be reflective of application of proper judicial mind by the Judge and it

> should not be a mechanical and not speaking judgment in nature.'

8. A judgment, detailing no reasons for conclusion, can't qualify the term ***'judgment'.*** Here, it is important to mention that since the status of ***appellate Court*** is final authority in the hierarchy of rent laws i.e Sindh Rented Premises Ordinance, 1979 therefore, its *judgment* must satisfy reasons of its conclusion whether it be in *affirmation* or *negation* regarding status of judgment under challenge. In the case of *Shakeel Ahmed & another v. Muhammad Tariq Farogh & others* 2010 SCMR 1925, it is affirmed as:

> 8. …. that jurisdiction under Article 199 of the Constitution cannot be invoked as substitute of another appeal against the order of the appellate Court. Therefore, mere fact that upon perusal of evidence, High Court came to another conclusion would not furnish a valid ground for interference in the order of **the appellate Court, which is final authority in the hierarchy of rent laws i.e Sindh Rented Premises Ordinance, 1979**.

9. In another case of *Mst. Mobin Fatima v. Muhammad Yamin & 2 Ors* PLD 2006 SC 214

> "8. The High Court, no doubt, in the exercise of its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 can interfere if any wrong or illegal conclusion are drawn by the Courts below which are not based on facts found because such an act would amount to an error of law which can always be corrected by the High Court. …… The findings of the appellate Court were cogent and consistent with the evidence available on the record. Its conclusions were in accordance with the fats found. **The finality was attached to its findings which could not be interfered with merely because a different conclusion was also possible**. The High Court, in the present case, in our view, exceeded its jurisdiction and acted as a Court of appeal which is not permissible under the law. Therefore, the High Court ought not to have undertaken the exercise of the reappraisal of the evidence.

Therefore, the appellate Court was required to give reasoning before holding the conclusion, so drawn by lower court, as **void.** Here, it is conducive to refer the relevant portion of the judgment of appellate court which reads as:-

> **"In the present case the learned trial court did not consider the evidence brought on record in respect of default in payment of electricity bill of shop in question as well as personal need of appellant**."

10. The above is the *only* findings on merits. The above, *prima facie,* shows that learned appellate Court has given no reasoning that how non-consideration of default in payment of electricity bill was **illegal** and that how question of *personal need* was not appreciated or was erroneous. The appellate Court, while disagreeing with view of lower Court, must give details for such disagreement and such *legal* obligation can't be said to have been discharged merely by saying that conclusion was wrong or that some material was not considered. The judgment of appellate court, *prima facie,* does not satisfy the requirement of **judgment** hence impugned judgment can't sustain. Accordingly, impugned judgment is set aside, case is remanded to the appellate Court to decide on merits. However, limitation will not come in the way of respondents as such point is rightly answered by the appellate court.

J U D G E

Karachi;
Dated:_______________
SAJID