

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

IInd. Appeal No.54 of 2009

The Secretary through Secretary PCCC Karachi
Versus
Abdul Samad Shaikh & others

Date	Order with signature of Judge
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1. For hearing of CMA 3499/09
2. For hearing of main case.

Dated: 24.01.2018

Mr. Inayat Hussain Shah for appellant.
Mr. Irfan A. Memon for respondent No.1.

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Muhammad Shafi Siddiqui, J.- This Second Appeal is arising out of the judgment dated 12.09.2009 passed in Civil Appeal No.148 2007 by II-Additional District Judge Karachi East. The suit was filed by respondent No.1 against the appellant which was decreed exparte after service. A belated/time barred appeal was filed which was dismissed, which order is impugned in this appeal.

I have heard the learned counsel and perused the material available on record.

The appeal was dismissed on the ground as being barred by time. The judgment of the trial Court was announced on 30.08.2007 and the decree was prepared on 04.09.2007. The appellant filed application to obtain certified copy on 21.11.2007 which was obtained on 28.11.2007, as reflected in the certified copy available in Record & Proceedings of Civil Appeal No.148 of 2007.

An application under section 5 of the Limitation Act was filed along with main appeal for condonation of delay, supported by alleged medical certificate available at page 143 Annexure 'G' of this file, which could hardly provide an indulgence for a period from 11.02.2007 to

15.02.2007. Though there is an over righting in respect of date of discharge i.e. 15.02.2007 but even if that is considered to be correct it only provides legitimate excuse for five days whereas there is no explanation or justification with regard to the period i.e. w.e.f. 30.08.2007 when the judgment was passed and 04.09.2007 when the decree was prepared until filing of the application to obtain certified copy on 21.11.2007. He was discharged on 15.02.2007 and the affidavit does not provide any explanation after that.

Even otherwise, this medical certificate perhaps is an explanation for not proceeding with the matter before the trial Court in suit and it can never be helpful for the purpose of filing appeal as there is a gap of about six months i.e. from 15.02.2007 to 30.08.2007 in between his discharge from hospital and passing of the judgment in suit.

The affidavit also does not explain that all other persons in the office were also unaware, specially the legal department of the appellant Secretary PCCC Karachi, Ministry of Food & Agriculture & Livestock, Government of Pakistan, Islamabad. It is quite surprising to note that entire department was left at the mercy of one person who was allegedly sick and has not attended the matter.

Since appeal was dismissed as barred by time and there is hardly any grounds mentioned in the affidavit filed in support of the application for condonation of delay, no interference is required. The Second Appeal is accordingly dismissed along with listed application. R & Ps be sent to the concerned court.

Judge