

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No. 58 of 2022

Date	Order with Signature of Judge
------	-------------------------------

1. For orders on CMA No.5535/2022 (Urgent application) :
2. For orders on office objection a/w reply as at 'A' :
3. For orders on CMA No.1449/2022 (Exemption) :
4. For hearing of main case :

26.09.2022 :

Mr. Muhammad Aziz Khan, Advocate for the appellant.

NADEEM AKHTAR, J. – Vide impugned order dated 01.11.2021, the appeal filed by the present appellant was dismissed by the appellate Court on the ground that the same was barred by limitation. Record shows that the decree was drawn by the trial Court on 29.04.2021 ; the application for its certified copy was filed by the appellant on the same day which was delivered to him on the very next day i.e. 30.04.2021 ; and, the appeal was filed by him on 03.07.2021. It was observed by the learned appellate Court in the impugned order that the appeal was hopelessly barred by time.

It was an admitted position before the learned appellate Court that the appeal was barred by limitation as the appellant had filed an application under Section 5 of the Limitation Act, 1908, praying that the delay in filing the appeal be condoned. In his said application, the appellant had stated in a vague manner that at the time of pronouncement of judgment by the trial Court he was suffering from lung infection caused due to Corona virus and was admitted in hospital in the mid of May 2021. The above explanation offered by him was rejected by the learned appellate Court by holding, inter alia, that the delay of each day was not explained by him. It is an admitted position that the certified copy of the decree was received by the appellant on 30.04.2021. According to his own contention, the appellant was admitted in hospital in the mid of May 2021. No explanation whatsoever was offered by him for not filing the appeal from 30.04.2021 to the mid of May 2021. Moreover, he did not disclose in his above application the date on which he was discharged from the hospital. Thus, the delay in filing the appeal remained unexplained before the learned appellate Court.

Learned counsel submits that the delay ought to have been condoned by the learned appellate Court under its inherent powers. I am afraid this contention cannot be accepted in view of Imtiaz Ali V/S Atta Muhammad and another, **PLD 2008 S.C. 462**, wherein 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, and no sufficient cause was found for filing the appeal beyond the period of limitation. The delay of only one day was not condoned by the Hon'ble Supreme Court in the cited case. In the above circumstances, the impugned order does not suffer from any illegality or infirmity. Accordingly, the appeal and listed application are dismissed in limine with no order as to costs.

JUDGE