

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

Ist Appeal 85 of 2022 : Tahir Hussain Siddiqui vs.
Learned XII AD&SJ Karachi West
& Others

For the Appellant : Mr. M. Ashraf Chohan, Advocate

Date/s of hearing : 19.10.2022

Date of announcement : 19.10.2022

ORDER

Agha Faisal, J. 1. Granted. 4. Granted, subject to all just exceptions. 2, 3, 5 & 6. The appellant has assailed an order dated 24.10.2019 rendered by the learned Banking Court-V at Karachi in Execution 71 of 1999; whereby the Nazir was directed to issue sale certificate in favor of the auction purchaser / nominee, hand over possession etc . While the appellant seeks to re-agitate the entire suit / execution process, however, the primary issue before us is the fact that the present appeal is admittedly time barred.

CMA 3342 of 2022 seeks condoning of delay by this Court on the sole premise that the counsel for the appellant has remained ill from time to time; however, no corroboration in such regard was demonstrated before us. The affidavit in support of the relevant application is also devoid of any grounds for grant of the application. The impugned order is dated 24.10.2019 and the certified copy thereof carries the date of 03.06.2021. It is apparent that the delay has not been justified in any cogent manner whatsoever and the premise invoked is found to be unsubstantiated and unsustainable.

Section 5¹ of the Limitation Act 1908 is a provision of law empowering a court to condone delay in the filing of certain specified proceedings. It is the considered opinion of the Court that the prescriptions of limitation are not mere technicalities and disregard thereof would render entire law of limitation otiose². It has been maintained by the Superior Courts consistently that it is incumbent

¹ 5. Extension of period in certain case. Any appeal or application for a revision or a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefore, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

² *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as 2019 MLD 249.

upon the Courts to first determine whether the proceedings filed there before were within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard³. It has been maintained by the honorable Supreme Court⁴ that each day of delay had to be explained in an application seeking condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed. In the present facts and circumstances the application seeking condoning of delay is found to be devoid of any cogent explanation / merit whatsoever.

The learned counsel was queried as to whether the appellant had filed any earlier proceedings to challenge the execution proceedings under consideration and he replied in the negative. Per learned counsel, it was his instructions that only the appellant's daughter had filed proceedings and the same were pending. This statement demonstrates that the counsel has been misled by the appellant as the appellant had earlier filed First Appeal 06 of 2019⁵ in the present context and the said appeal had been disposed of vide order dated 09.10.2019. Subsequently, the appellant moved two applications in the same appeal seeking to modify the judgment and to suspend a consequent order passed by the learned Banking Court in the very execution proceedings and the same were dismissed vide a detailed order dated 22.11.2019. The record also demonstrates that another appeal, being First Appeal 83 of 2019⁶, was preferred by the appellant and the same was dismissed vide order dated 10.12.2021. The active concealment perpetrated by the appellant renders him liable to imposition of costs.

In conclusion, it is observed that no case is made out for condoning of delay; therefore, CMA 3342 of 2022 is hereby dismissed *in limine*. As consequence hereof, the present appeal and other application/s are also dismissed *in limine* with costs of Rs. 100,000/-, to be paid by the appellant into the account of the Sindh High Court Clinic within 7 days from the date hereof.

JUDGE

JUDGE

³ *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

⁴ *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821.

⁵ Copy of the memorandum of petition attached at page 171; however, the orders therein have not been disclosed.

⁶ Copy of the memorandum of petition attached at page 229; however, the orders therein have not been disclosed.