

# IN THE HIGH COURT OF SINDH AT HYDERABAD

Civil Revision application No.S-267 of 2022 : Federation of Pakistan & Others  
For the applicant : Mr. Riazuddin Qureshi, Advocate.  
For the respondent : Mr. Indeer Jeet Lohana, Advocate.  
Date/s of hearing : 14.11.2023.  
Date of announcement : 14.11.2023.

## ORDER

**Agha Faisal, J.** Civil Appeal No.166 of 2021 was dismissed vide judgment dated 18.10.2022 by learned Illrd Additional District Judge Hyderabad on the ground that Court fee was not paid within the period of limitation. The judgment observes as follows:

"Scanning the file of the appeal, I have noted that the appeal was filed on 26.08.2021 without Court fee Stamp by the appellant and the Court fee Stamp were supplied through an statement filed by Learned Counsel for the appellant dated 18.11.2021 i.e. after two months and twenty three days of filling of the appeal, therefore, the first point is to determine as under:-

"Whether the filling of appeal without Court fee Stamp and making up deficiency later on is permissible under the law?

In the instant appeal, the appeal is filed on 26.8.2021 without Court fee stamp; the office also raised objection that Court fee stamps are not affixed. No application U/S 149 CPC was filed along with appeal, for grant of time to submit the Court Fee stamp. The Court fee Stamps were supplied through an statement dated 18.11.2021; it is important to note that the diary dated 18.11.2021 is silent for submission of the Court fee Stamps through statement; the statement also does not show the signature of the undersigned as Presiding Officer or the signature of the Reader receiving the Court fee Stamps through statement. The case diary dated 18.11.2021 shows that junior partner of the Learned Counsel for the appellant submitted adjournment application to argue the appeal.

According to law if the appellant files an appeal with deficit Court fee, the appellate Court on filing application under section 19 CPC can extended time. However, payment of Court fee beyond period of limitation prescribed for filing an appeal render the appeal itself as time barred. In the case of Qazi Muhammad Ilyas and 7 others versus Qazi Muhammad Raees and 3 others (2014 CLC 160) when first appeal filed without Court fee and payment of Court fee along with application under section 19 CPC made at the time of arguments, the order allowing the appellant to pay Court fee was se-aside by Honourable High Court of Sindh in Revision Petition and it was held that the appellate Court had allowed appellant to pay Court fee when his appeal was barred by limitation. Reliance is also placed in an un-reported order passed in Civil Revision No.S-98 of 2021 (Re: Kamal Khan Hajwani Bugti and another versus Sindh and other) by Honourable High Court of Sindh Circuit Court, Larkana.

Reliance is also placed in case of Mrs. Safia Siddiq reported in 2009 CLC 262 wherein it has been held that condonation of delay to pay Court fee after expiry of period of limitation would amount to destroy of provision of Limitation Act 1908 and the appellant was bound to pay the Court fee on appeal within the limitation provided under the law.

In the light of the judgment referred in the paragraph (supra), it is clear that the date of payment of Court fee at the appellate stage is linked with the date of filing of appeal, Learned Counsel for the appellant without seeking permission or filing of application for condonation to delay in submission of the Court fee Stamps, as well as, without any legitimate explanation by mere statement dated 18.11.2021 submitted the Court fee Stamps in order to making up deficiency of the Court fee. Reliance is placed in case of Assistant Commissioner & Land Acquisition Collection Badin reported in 1997 SCMR 919 wherein it has been held by the Hon'ble Supreme Court that when the petitioner was negligent and his conduct was contumacious in payment of Court fee, there existed no reason to show any indulgence to him to extend time.

Seeking guidelines from the case law referred above, if any appellant files an appeal with the deficit Court fee, the appellate Court under S.149 CPC can extend the time, however, payment of Court fee beyond the period of limitation prescribed in filling of an appeal would render appeal itself as time-barred. The submission of the Court fee through statement after two months and 23 days of filling of the appeal is not permissible under the law as by that time the appeal was already time barred. Hence, the delay in submission of Court fee can neither be considered nor the submission of Court fee can be accepted after the period of limitation. Such relaxation in payment of Court fee beyond the period of limitation would amount to making the provision of Limitation Act as infertile, therefore, there is no need go to into the merits of the case because by not making up deficiency of Court fee without period of limitation, render the appeal as time barred.

In view of above circumstances, the appeal in hand, stands dismissed accordingly with no order as to costs."

Learned counsel for applicant submits that the matter out to have been decided on merits and not on mere technicalities on alleged non-payment of Court fee within limitation.

Heard and perused. The narrative contained in the impugned judgment has not been controverted by the applicant's counsel, however, it is insisted that

notwithstanding the same the appellate court ought to have disregarded the issue of limitation.

It is settled law that failure to pay court fee within the limitation period and / or seeking an extension in terms thereof within the period of limitation would render the appeal itself as time barred.<sup>1</sup> Admittedly, the applicant did not deposit any court fee with the appeal and / or within the period of limitation, hence, the dismissal of the appeal. No infirmity in respect of such finding could be identified before this court.

This Court has considered the contentions of the applicant and has noted the inability to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the impugned judgment is either an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity. It is trite law<sup>2</sup> that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the judgment impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate fora.

It is the considered view of this court that the applicant has remained unable to demonstrate any infirmity with the impugned judgments, meriting interference in revision under Section 115 C.P.C, therefore, this revision is hereby dismissed.

Judge

A.Rasheed/stenographer

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<sup>1</sup> 2014 CLC 160; 2020 CLC 33; 2009 CLC 262; 1997 SCMR 262; PLD 1981 SC 489; PLD 1979 SC 821; 1979 SCMR 243.

<sup>2</sup> Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.