

IN THE HIGH COURT OF SINDH AT KARACHI

II-Appeal No. 92 of 2023

Appellant : M/s Megi Engineering (Pvt)
Limited through Mr. Zia-ul-Haq
Makhdoom advocate

Respondents : Nemo

Date of hearing : 14.04.2023

Date of judgment : 14.04.2023

J U D G M E N T

SALAHUDDIN PANHWAR, J. Through captioned II-Appeal, appellant has challenged order dated 28.03.2023, passed in Civil Appeal No.25/2023, whereby; the application for condonation of delay in filing of the appeal was dismissed.

2. Relevant facts for disposal of instant appeal are that respondent/plaintiff Pakistan Steel Mills Corporation (Pvt) Limited filed a suit against the appellant/defendant for Declaration, Cancellation, Possession, Recovery of Rs.27,86,328/- as outstanding dues and Mesne Profits. In the first round the suit was decreed by judgment dated 30.10.2017 by III-Senior Civil Judge, Malir, Karachi, which was challenged by the appellant before Learned Appellate Court and by judgment dated 26.02.2018, whereby the judgment and decree dated 30.10.2017 was set aside and the matter was remanded back to the trial court with direction to give opportunity to plaintiff to adduce the evidence of attesting witnesses of documents of lease if he chooses and to give opportunity of cross-examination to defendant and also to give fair opportunity to defendant to adduce the evidence in rebuttal and after hearing the parties afresh decide the suit in accordance with law within a period of 03 months. After remand, the suit was proceeded and due to non-appearance the appellant/defendant was debarred from cross-examining the

plaintiff's witness and thereafter vide judgment dated 25.05.2019, the suit of the plaintiff/respondent was decreed. The appeal against the said judgment and decree was preferred by the appellant with an application for condonation of delay in filing of the appeal, which application was heard by learned Appellate Court and vide order dated 28.03.2023, dismissed the same, consequently, the appeal was also dismissed, hence the appellant has preferred the instant appeal.

3. Learned counsel for the appellant argued that the delay in filing of the appeal was not deliberate or intentional, but was caused due to unavoidable circumstances which were beyond the control; that in the first round when the matter was remanded to the trial Court, the appellant appeared before the trial Court but his presence was not marked and it was informed that the court notice will be issued to him, but no such notice was issued; that appellant went to Islamabad and in his absence the trial court proceeded with the matter and ultimately allowed the execution application without issuing notice to the appellant in slipshod manner. Lastly, it is urged that the appeal should be decided on merits rather than on technical ground of limitation.

4. Heard and perused the record.

5. Record reflects that the judgment and decree of the trial court were passed on 25.05.2019, however, the appellant applied for obtaining certified copies of the judgment and decree on 10.03.2023 with considerable delay, which were delivered to the appellant on the same day. The appeal against the said judgment and decree was preferred on 17.03.2023 and no sufficient reasons for such delay have been advanced. Perusal of record, it appears that during proceedings of suit No.96 of 2016 the appellant entered appearance and filed his written statement. It is further reflected that in the first round of litigation while remanding the matter by the appellate Court, it was specifically directed to the parties to appear before the trial Court, hence no notice was required to be issued by trial Court and nothing has been brought on record by the appellant as to why he failed to appear before trial Court even after issuance of such directions. Even after remand, throughout the proceedings, the appellant chosen to remain absent without any intimation.

6. It is a well-established principle of law that in order to seek concession of condonation and discretion of the Court, the party must explain the delay of each and every day, which has not been done in this case. It is also well-settled that where an appeal is not filed within time and valuable rights accrue in favour of the opposite party, such valuable rights cannot be taken away unless very strong, convincing and solid grounds are shown for condoning the delay. Reliance is placed upon the case reported as *Imtiaz Ali V/S Atta Muhammad and another (PLD 2008 S.C. 462)*, wherein it was held by Apex 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 as such even the delay of only one day was not condoned by the Hon'ble Supreme Court as no sufficient cause was found for filing the appeal beyond the period of limitation.

7. With regard to argument of learned counsel for the appellant that the appeal should be decided on merits rather than on the technical ground of limitation, the same cannot be accepted as in case reported as *Government of Pakistan through Ministry of Works and another V/S Messrs Malbrow Builders, Contractor, Sialkot (2006 SCMR 1248)*, the Hon'ble Supreme Court has held that the question of limitation being not a mere technicality cannot be taken lightly and the rights accrued to the other party due to limitation cannot be snatched away without sufficient cause and lawful justification. Whenever an application for condoning the delay in filing a time barred appeal or application is filed, irrespective of the length or period of the delay, it is only to be seen whether delay of each and every day has been explained in a satisfactory manner to enable the Court to exercise discretion in favour of the party seeking condonation of delay, in case of failure, a party is not entitled to seek condonation of delay as a matter of right.

8. For the forgoing reasons, the appellant has failed to make out his case to interfere in the findings recorded by learned Appellate Court. Accordingly, the instant petition is dismissed in *limine*.

J U D G E