

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

H. C. A. No. 95 of 2022

Date	Order with Signature of Judge
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Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Yousuf Ali Sayeed

1. For orders on office objections a/w reply at 'A' :
2. For hearing of CMA No.689/2022 (U/S 5 of Limitation Act) :
3. For hearing of CMA No.691/2022 (Stay) :
4. For hearing of main case :

05.10.2023 :

Mr. Nehal Khan Lashari, Advocate for the appellants.

Mr. Ali Asghar Buriro, Advocate for respondent No.1.

NADEEM AKHTAR, J. – The appellants have impugned the judgment delivered on 18.10.2021 and decree drawn on 18.01.2022 by a learned Single Judge of this Court in Suit No.390/2004 filed against them and respondents 2 to 8 by respondent No.1 for declaration, cancellation and permanent injunction, whereby the said Suit was decreed against them to the extent of the first two prayers made therein. CMA No.689/2022 has been filed by the appellants for condoning the delay in filing the instant appeal. Perusal of the impugned decree dated 18.01.2022 shows that the application for obtaining its certified copy was filed by the appellants on 31.01.2022 which was delivered to them on the same day, however, the present appeal was presented by them on 24.02.2022. The dates noted above show that the appeal is barred by six (06) days. The only ground on which the delay is sought to be condoned has been stated in a vague manner in paragraph 3 of the affidavit filed by appellant No.1 in support of the application which reads as under :

“ 3. That the appellant was unaware about for(!) filing the instant High Court Appeal without further delay hence the limitation period of filing the instant appeal may kindly be condone(!)”

The so-called explanation offered by appellant No.1 that he was not aware about filing of the appeal is indeed surprising as it means that the appeal was filed without his knowledge. If it was meant by him that he was not aware that he had to file an appeal, even then his contention cannot be accepted. The other two appellants have not offered any explanation whatsoever. It is significant to note that the number of days by which the appeal is barred by time has not been disclosed in the application, nor has the delay of each and every day been explained therein. Thus, the delay in filing the appeal remains unexplained and as such cannot be condoned 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 prescribed 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. Even the delay of only one day was not condoned by the Hon'ble Supreme Court in the cited case. In the above circumstances, CMA No.689/2022 is dismissed and resultantly the appeal and listed application are dismissed with no order as to costs.

JUDGE

JUDGE

~~Asif~~