

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No. 162 of 2019

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.1134/2019 (U/S 5 of the Limitation Act) :
3. For hearing of CMA No.1136/2019 (Stay) :
4. For hearing of main case :

06.10.2023 :

Mr. Taimur Ali Mirza, Advocate for the appellant.

Mr. Ahmed Madni, Advocate for respondents 1 to 3.

NADEEM AKHTAR, J. – The appellant has impugned the judgment delivered on 31.07.2018 and the decree drawn on 06.08.2018 by a learned Single Judge of this Court in Suit No.746/2007 filed by respondents 1 to 3 against him and respondents 4 and 5 for damages under the Fatal Accidents Act, 1855, whereby the said Suit was decreed jointly and severally against him and respondents 4 and 5 in the sum of Rs.15,003,000.00 along with profit thereon at the bank rate from the date of the decree. Perusal of the impugned judgment shows that the appellant / defendant No.1 had contested the Suit and had also led evidence, however, his counsel was absent at the time of final arguments.

CMA No.1134/2019 has been filed by the appellant for condoning the delay in filing the instant appeal. Perusal of the impugned decree dated 06.08.2018 shows that the application for obtaining its certified copy was filed by the appellant on 08.03.2019 which was delivered to him on the same day, however, the present appeal was presented by him on 18.03.2019. The dates noted above show that the application for obtaining certified copy of the decree was filed by the appellant after expiration of the prescribed period of limitation, and the appeal is barred by about seven and half months. The application is supported by the affidavit of the appellant's attorney who has stated that the appellant's counsel had been vigilantly pursuing the Suit, however, he could not attend the same on the last three dates of hearing viz. 11.05.2018, 31.05.2018 02.06.2018 as he was seriously ill and had to go abroad for medical treatment, and for this reason, he was in Canada from 27.05.2018 till 26.08.2018. In paragraph 10 of the affidavit, it is stated that the appellant came to know that his counsel was hospitalized in November 2018 at Aga Khan Hospital Karachi and he finally passed away on 19.12.2018. In paragraph 11, it is stated that the case file was returned to the appellant

in February 2019 by the family members of his counsel. Paragraph 12 of the affidavit states that the appellant came to know about the impugned decree through the notice received by him in Execution Application No.09/2019 filed against him by respondents 1 to 3. Except for the above, no other explanation has been offered by the appellant for condoning the long delay of seven and half months.

It is well-settled that it is the duty of every litigant to pursue his case diligently and vigilantly, and to keep track of his cause on regular basis by inquiring its progress from his counsel at every stage of the case and after every date of hearing. In the present case, the appellant has admitted that his counsel was having serious health issues since quite some time. Accordingly, it was his duty to make some alternate arrangement either by engaging a new counsel or by appearing in person, however, he chose not to do so. It is not the case of the appellant that his counsel was on general adjournment on the relevant dates nor has any intimation in this behalf been filed by him. Moreover, he has admitted that he was aware that his counsel was hospitalized in November 2018 at Aga Khan Hospital Karachi and he finally passed away on 19.12.2018. Despite this position, he did not make any effort to inquire about the progress or fate of the Suit. The case file was admittedly received by him in February 2019 (specific date has not been disclosed by him), but this appeal was presented by him on 18.03.2019, for which no valid explanation has been offered. In the above circumstances, the so-called explanation offered by the appellant does not appear to be convincing or sufficient for this Court to exercise its discretion for condoning the unusually long delay of seven and half months.

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.1134/2019 is dismissed and resultantly the appeal and listed application are dismissed with no order as to costs.

JUDGE

JUDGE

Asif