

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

IInd A.No.84 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

For hearing of CMA-1962/2023
For hearing of CMA-1981/2022
For hearing of main case.

16-10-2023

Barrister Jawad Ahmed Qureshi, advocate for appellants.
Mr. Muhammad Suleman Unar, advocate for respondent No.4.
Attorney of respondent No.4 Amjad Ali is present.
Mr. Rafique Ahmed Dahri Assistant Advocate General, Sindh.

Agha Faisal J. This is a IInd Appeal preferred under section 100 C.P.C against the order dated 20.08.2022 rendered by the Court of the learned 7th Additional District Judge, Hyderabad in Civil Appeal No.143 of 2022. The learned appellate Court had dismissed the appeal there before on account of it being time barred. The pertinent observations are reproduced herein below:

"5. The decree in the instant matter has been passed on 28.05.2022 and appeal has been preferred on 14.07.2022 which means same has been filed after 47 days whereas the period of limitation is only 30 days. I am confused as to how appeal is delayed 8 days instead of 17. Even if the period required for obtaining copy is excluded, from 31.05.2022 to 01.06.2022, the appeal is still filed after delay of 14 days. The perusal of affidavit shows that the counsel claims bonafide mistake in computing the time by relying the cases reported in 2020 CLC 1568, 2019 CLC 1697 & 2018 YLR 1831. The reported case laws have held that the court should dispose of the matters on merit for safe administration of justice and avoid technicalities by condoning the period of delay on account of showing sufficient cause and court should not act rigidly but liberally in favour of the appellant. I have utmost regard for the case laws cited by the learned counsel for appellant since they are binding on this court under the principle of precedent but as per law of the precedent, this court has to first see whether on the same law point, whether Honourable Supreme Court had given any law or not. The law of precedent is binding and deviation calls for contempt. In case of Mst. Samrana Nawaz vs MCB Bank Ltd (PLD 2021 SC 581), it was held judgments of Honourable Supreme Court are binding on all courts of law.

6. Having said that, undersigned have gone through the Judgment as reported in Khushee Muhammad through L.Rs vs Mst. Fazal Bibi (PLD 2016 SC 872), the member full bench of Honourable Supreme Court categorically held that the limitation should be applied strictly and not leniently by holding that;

"(i) Law of limitation was a statute of repose, designed to quieten title and to stale and water-logged disputes and was to be strictly complied with. Statutes limitation by their very nature were strict

and inflexible. The law of limitation do not confer a right; it only regulates the rights of the parties...there was no scope law of limitation for any equitable or ethical construction. Justice, equity and.... conscious did not over ride the law of limitation. Object of law of limitation was prevent stale demands and so it ought to be construed strictly. ”

The above passage clearly shows that the law of limitation has to be interpreted with strictness and not leniently. Further, the learned counsel has simply stated that he committed mistake in counting days but in the same case of Mst. Samrana (Supra) the Honourable Supreme Court defined sufficient cause for condonation of delay and held that mere in competence of counsel, inadvertence, negligence or ignorance of law attributable to him and/or overlooking of record by counsel could not constitute sufficient cause ipsofacto. Thus, under these circumstances, the ground agitated is not a sufficient ground for condonation of 14 days where law requires explanation of each & every day.

Resultantly, by respectfully distinguishing the case laws, the instant appeal is dismissed being time barred.”

2. Learned counsel for the appellants submits that the learned 1st Appellate Court ought to have decided the appeal on merit and not non-suited the appellant on the mere technicality of limitation. On the contrary, the learned A.A.G and the learned counsel for the respondent No.4 support the impugned order and submit that in view of the admitted unjustified delay the impugned order has been rightly rendered within the four corners of the law.

3. Heard and perused. Respectfully, this Court is unable to sustain the argument terming limitation as a mere technicality. 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 otiose¹. It has been maintained by the Superior Courts consistently that it is incumbent 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 regard².

4. The appellate court appears to have justified the dismissal of the appeal, in view of the deliberation of law cited supra, and the computation of limitation is clearly manifest there from. Even otherwise, the belated nature of the appeal is an admitted fact as noted from paragraph 2 of the order. Section

¹ *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as 2019 MLD 249.

² *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

5³ of the Limitation Act 1908 is a provision of law empowering a court to condone delay in the filing of certain specified proceedings. The factum that such an application was filed by the appellants demonstrated an admitted delay in filing of the appeal and the denial thereof could not be demonstrated to suffer from any infirmity. In view hereof, no exception could be demonstrated with respect to dismissal of the relevant application by the learned appellate court.

5. It is settled law that a second appeal may only lie if a decision is demonstrated to be contrary to the law; a decision having been failed to determine some material issues; and / or a substantial error in the procedure is pointed out. It is categorically observed that none of the aforesaid ingredients have been identified by the learned counsel. In such regard it is also important to advert to section 101 of CPC, which provides that no appeal shall lie except on the grounds mentioned in the Section 100 of CPC.

6. In view of the reasoning and rationale herein contained, this appeal is found to be devoid of merit, hence, hereby dismissed.

J U D G E

Ahmed/Pa

³ 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.

Explanation. The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.