

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

IIInd Appeal No.105 of 2016

Muhammad Azad Kamal
Versus
Moinuddin & others

Date	Order with signature of Judge
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1. For hearing of CMA 9313/16
2. For hearing of main case

Dated: 27.03.2018

Mr. Abdul Wahab Baloch for appellant.
Mr. Naveed Ali for respondents.

This Second Appeal filed by appellant has arisen of an order passed by appellate Court where his appeal bearing No.15 of 2015 was held as time barred. Along with appeal an application for condonation of delay was filed supported by burial certificate.

It is claimed by the appellant's counsel that appellant has contested the suit before the trial Court as there were two suits; one filed by the appellant and the other by respondent. Both the suits were consolidated and the evidence was recorded hence there was no reason or occasion that appellant could have not filed appeal in time. He submits that the delay was caused only on account of sad demise of appellant's young son in Behrain whose dead body was brought to Pakistan and was buried somewhere on 25.12.2014 and hence appellant was not in right frame of mind until he contacted his counsel for filing appeal which was delayed for 1½ month.

On the other hand learned counsel appearing for respondents has seriously opposed the condonation of such delay as each day ought to be explained in his application seeking condonation of such delay.

I have heard the learned counsel and perused the material available on record.

The delay was caused on account of sad demise of young son of the appellant. The delay was not on account of his business or any other technical issue for which delay of each day is required to be explained. There are certain occasions such as this one, which certainly does not call for each day's explanation as mentioning of it is sufficient for the Court to consider it sympathetically. Certainly the discretion should not be exercised extendly but, it calls for a favourable discretion. The dead body of appellant's son was brought to Pakistan and the burial took place sometime on 25.12.2014. Certainly for a father it was a shock and it must have taken some time for him to recover. This ought to have been considered by the appellate Court while deciding the application for condonation of delay. I am of the view that a very harsh view was taken by the appellate Court while considering the application for condonation of delay. The appellant was not in right frame of mind as mentioned in the application, when the time was expiring to file an appeal. He however preferred the appeal after 1½ month. Such facts and documents annexed with the application ought to have been taken into consideration by the appellate Court as this is a case where discretion could have been exercised by appellate Court for condoning the delay.

In view of the above on this limited point of sad demise of appellant's son the appeal is allowed and the case is remanded to the appellate Court for a decision on merits strictly in accordance with law within four weeks from today with report to MIT-II of this Court.



Certified to be true copy,

29/3/2018
Assistant Registrar (Civil/Writ SB)

Sd/-MUHAMMAD SHAFI SIDDIQUI
JUDGE

P.T.O.

IInd Appeal No. 105 of 2016.

Karachi, dated: 29th March, 2018.

Forwarded for information and compliance to:

1. The Member Inspection Team-II of this Court.
2. The IVth Additional District Judge Karachi (Central) in Civil Appeal No.15/2015
Reg. Muhammad Azad Kamal versus Moinuddin & others.
3. The IInd Senior Civil Judge Karachi (Central) in Civil Suit No.936/2002
Reg. Moinuddin versus Mohammad Azad Kamal & others.


(Abdul Rasheed Baloch)

Assistant Registrar (Civil / Writ SB)

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29/3/2018
Assistant Registrar (Civil/Writ SB)

Sd/-MUHAMMAD SHAFI SIDDIQUI
JUDGE

P.70

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(Abdul Rasheed Baloch)

Assistant Registrar (Civil / Writ)

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