

IN THE HIGH COURT OF SINDH, KARACHI

Revision Application No. 175 of 2024

MUHAMMAD IMRAN
VERSUS
MUHAMMAD ISHAQ MEMON & 2 OTHERS

Date of hearing : 24th March, 2025.
Date of announcement : 11th April, 2025
Application through : Mr. Fazal Mehmood Sherwani, Advocate
Respondent : In person.

ORDER

Muhammad Jaffer Raza, J.:- The Applicant is aggrieved with the judgment and decree dated 25.04.2024 passed in Civil Suit No. 776 of 2006. Same was impugned in Civil Appeal No. 158 of 2024 and said appeal was dismissed vide judgment dated 03.08.2024.

2. Brief facts of the case are that Respondent No.1 had filed Suit for recovery of Rs. 7,625,000/- against the Applicant and Respondent Nos. 2 & 3. The said Suit was decreed in favour of the Respondent No.1 on 25.04.2024. The Suit was only decreed against the Applicant and was dismissed against Respondent Nos. 2 & 3. It is further pertinent to mention that the Suit was decreed for an amount of Rs. 1,500,000/-. Thereafter, the Applicant filed Civil Appeal No.158 of 2024, which was dismissed vide impugned judgment dated 03.08.2024 on the ground of limitation alone. The points for determination were set as follows:

Point No.1: Whether instant appeal is time barred?

Point No.2: What should the judgment be?

3. It is apparent that the Appeal was presented on 30.05.2024 against the judgment dated 25.04.2024, which was beyond thirty days period prescribed under Article 152 of the Limitation Act, 1908. The application for obtaining certified copy was filed by the Applicant on 24.05.2024, however, fee was submitted on 30.05.2024. It is settled principle of law that period consumed by the party between the date of estimation and date of deposit shall be excluded from the

period of limitation prescribed. The Appeal as admitted by learned counsel for the Applicant was time barred by six days. Learned counsel for the Applicant has submitted that the delay was due to no fault of Applicant as the judgment was “released” later than the date prescribed on the said judgment.

4. Learned counsel for the Respondents has conversely argued that announcement of impugned judgment by the trial court was uploaded on the Website and the application for certified copy was filed after one month of passing the judgment and decree by trial court without any genuine reason being cited.

5. I am mindful that the delay in filing the appeal is not significant, however, I equally mindful of the fact that admittedly no application under section 5 of Limitation Act was preferred by the Applicant. In this regard I find no infirmity with the impugned order as the same is in consonance with the dicta of this court laid down in the case of **Muhammad Iqbal versus Muhammad Ahmed Ramzani**¹ wherein it was held as follows: -.

“12. In the above context, we would like to observe that the jurisdiction of a court is always subject to limitation. If the proceedings brought before a court is barred by time, the court cannot assume jurisdiction and shall have no jurisdiction in the matter, unless the delay is condoned first. Till such time, the jurisdiction of the court will be restricted only to the extent of deciding the question of limitation. In case such question is decided by the court by declining to condone the delay, the proceeding shall remain time barred and the matter will end there. On the other hand, if the delay is condoned, only then shall the court have the jurisdiction to proceed further in the matter. Thus, it is mandatory for the court to decide the question of limitation before entertaining the matter and before passing any other order therein.”

6. Had the Applicant filed application for condonation and the same was dismissed by the appellate court then I would be inclined to consider the above submission of the learned counsel for the Applicant. In the light of fact that no such application was filed and no *suo moto* powers are available to this court to condone such delay, in the absence of a condonation application filed before the appellate court, I find no reason to interfere with the impugned judgment dated

¹ 2014 CLC 1392

30.08.2024. Reference in this respect be made to the case of **Mst. Musarat Parveen versus Muhammad Yousaf and others**² wherein it was held as under: -

“It may be relevant to mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "Law" itself. In the case of Muhammad Iftikhar Abbasi v. Mst. Naheed Begum and others (2022 SCMR 1074), it was held by this Court that the intelligence and perspicacity of the law of Limitation does not impart or divulge a right, but it commands an impediment for enforcing an existing right claimed and entreated after lapse of prescribed period of limitation when the claims are dissuaded by efflux of time. The litmus test is to get the drift of whether the party has vigilantly set the law in motion for the redress or remained indolent.”

6. For the foregoing reasons instant revision application is dismissed.

Aamir/PS

JUDGE

² 2023 SCMR 1665