

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Misc. Appeal No.174 of 2023

Present

Mr. Justice Muhammad Jaffer Raza

Muhammad Faisal..... Appellant.

Versus

Iftikhar Ahmed Farooqi & others..... Respondents

Khawaja Naveed Ahmed, advocate for the Appellant.
Mr. Jamshed Qazi, advocate for the Respondent No.1 along with
Mr. M. Ashraf Chohan, advocate.

Date of Hearing: 11.04.2025
Date of Order: 11.04.2025

ORDER

MUHAMMAD JAFFER RAZA – J: Instant appeal has been filed under Section 53(2) of Sindh Cooperative Societies Rules 2020, impugning the judgment dated 30.07.2022 passed by the Court of Vth Senior Civil Judge Karachi West/Special Court for Co-operative Societies Karachi-Division in Society Suit No.88 of 2022 (old Civil Suit No.1016/2018). Learned counsel for the Respondent at this stage has first raised the issue regarding limitation of the instant appeal. An application as CMA No.9939/2023 has been filed under Section 5 of the Limitation Act 1908 read with Section 151 CPC for condonation of delay.

2. Learned counsel for the Appellant states that the Appellant was not in the knowledge of judgment and decree passed by the learned trial Court. He has further argued that due to his personal circumstances and medical exigencies the Appellant was not informed or not able to find out about the

pendency of the above-mentioned suit and neither was he in a position to impugn the judgment and decree, which was passed on 30.07.2022. He has lastly argued that he only wishes to be heard on merits and the case may be remanded back to the trial Court for decision afresh.

3. Conversely, learned counsel for the Respondent No.1 has vehemently opposed the application bearing CMA No.9939/2023 and he has argued that the delay on part of the Appellant is unconscionable. He has further argued that the Appellant before the learned trial Court filed written statement and also his Affidavit-in-Evidence. He has further stated that the Appellant affected appearance in the case, filed written statement and was even cross examined. Therefore, there is no question of the judgment and decree not being in his knowledge.

4. I have heard the learned counsel for the parties and perused the impugned judgment and decree. It is apparent that the judgment and decree was passed on 30.07.2022 and instant appeal was preferred on 13.12.2023, approximately after one year and five months after the judgment and decree was passed by the trial Court. It is also evident from perusal of the record that the judgment and decree annexed by the Appellant himself shows that the application for certified copies was applied for on 01.08.2022 and the same was made available on 04.08.2022. Upon posing the specific question, learned counsel for the Appellant stated that the said application for certified copy, was not preferred by him, however, he has not pointed out the application filed by him, if at all. Further the Appellant also could not explain as to how the judgment and decree came into his knowledge and in this respect was uncertain about his "date of knowledge".

5. I have examined the application bearing CMA No.9939/2023, the contents whereof and also the documents annexed along with instant appeal.

Generally, I am of the view that a lenient view may be taken in regard to limitation specially in cases in which the delay is beyond the control of the Appellant. However, I hold in the instant case that the learned counsel for Appellant has not been able to make a case for grant of such leniency as no "sufficient cause" has been shown. It is also a settled principle of law that the delay of each and every day ought to be explained by the Appellant, as valuable rights are accrued in favour of the parties, and in this regard the Appellant has made no such effort to explain the delay.

6. The principles referred to above were expounded by a divisional bench of this Court in the case of **Saturgun v. Engineer Kumar & Another**¹ wherein a delay of 18 days was held to be fatal. It was observed as follows:-

"It is crucial to underscore the significance of the law of limitation. This legal framework mandates that courts must initially ascertain whether the proceedings filed therein adhere to the stipulated time frame. Such scrutiny is obligatory for the courts, irrespective of whether any objection has been raised to that effect. The Superior Courts have consistently emphasized that even a delay of a single day could warrant dismissal. Once the limitation period begins, it continues uninterrupted (i.e. runs continuously), creating vested rights in favor of the opposing party. Consequently, if a matter becomes time-barred, it must be dismissed without touching into the merits. 3 Furthermore, once the imitation period expires, the avenue for adjudication is closed, regardless of pleas of hardship, injustice, or ignorance."

7. The Honourable Supreme Court in the case of **Mst. Musarar Parveen Versus Muhammad Yousaf and others**² held as follows:-

"The power to condone the delay and grant an extension of time under the Limitation Act 1908 is discretionary. In the case of Dr. Muhammad Javad Shafi Vs. Syed Rashid Arshad and others (PLD 2015 SC 212), the Court held that the law of Limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence without dilatoriness and negligence

¹ First Appeal No.01 of 2004

² Civil Petition No.174-Q of 2021

and within the time provided by the law, as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. 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 Vs. Mst. Nabeed 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. In the case of Khudadad Vs. Syed Ghazanfar Ali Shab @ S. Inaam Hussain and others (2022 SCMR 933), it was held by this Court that the objective and astuteness of the law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right. In fact, this law has been premeditated to dissuade the claims which have become stale by efflux of time."

8. In light of what has been held above CMA No.9939/2023 is hereby dismissed, consequently instant appeal is also dismissed with no order as to cost.

JUDGE