

## IN THE HIGH COURT OF SINDH, KARACHI

*Before: Muhammad Junaid Ghaffar ACJ &  
Mohammad Abdur Rahman, J*

**HCA No.523 of 2024**

Shamsuddin Shaikh & others

Vs.

Mst. Shahzadi Faheem & others

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Appellant : Mr. Afaq Ahmed, Advocate

Date of hearing : 15 April 2025

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### **ORDER**

**MOHAMMAD ABDUR RAHMAN, J:** This Appeal has been maintained as against an impugned order dated 11 November 2024 and which was presented before this Court on 16 December 2024. The Period of Limitation provided under Article 151 of the First Schedule of the Limitation Act, 1908 for maintaining the Appeal is 20 days from the date of the order. The Appellant applied for a Copy of the Impugned Order on 14 November 2024 and which copy was prepared by the copyist on 22 November 2024. Even after deducting a period of seven days, the appeal is still barred by 6 days. CMA No.3295 of 2024, being an application under Section 5 of the Limitation Act, 1908, seeking condonation for the delay in the presentation of this Appeal, has been maintained by the Appellants and which reads as hereinunder:

“ ... *It is respectfully prayed on behalf of the appellant that this Honourable Court may be pleased to condone the delay for filing of High Court Appeal because the appellants were unaware about the limitation of the instant case and it will be in the interest of justice to allow this application.*”

The affidavit filed in support of CMA No.3295 of 2024 reads as hereinunder:

" ... I, Abdul Shakoor S/o Haji Abdul Kareem Shaikh Former President of Saima Square One Tower Residents Association, Muslim Adult, Rio Flat No G/1002, Saima Square One Tower Dalmian Road Near Millennium Mall Gulshan-e-Iqbal Karachi,, Attorney of other Appellants do hereby state on oath as under:-

1. I say that I am one of the Appellant and attorney of other appellants in the above HCA, and well conversant with its facts.

2. I say that the contents of memo of Limitation Application have been drafted as per my instructions, and the same may be treated as part and parcel of this affidavit.

3. I say that whatever stated herein above is true and correct to the best of my knowledge and belief."

As is apparent, the only ground that has been raised to condone the delay in filing of this Appeal is that the Appellant was not aware of the period of limitation for the filing of this Appeal. We are of the opinion that ignorance of law is not a ground on which an application for condonation of delay can be maintained and hence CMA No.3295 of 2024 is misconceived and is dismissed and as a consequence of which the Appeal is barred under Section 3 of the Limitation Act, 1908 and is hence also dismissed.

While after dismissing CMA No. 3295 of 2024 there would be no need to consider the merits of the Appeal, we are of the opinion that even on merits this Appeal was not maintainable. It seems that Suit No.756 of 2021 was instituted by the Respondent No.1 in respect of which evidence was being adduced on commission. The Commissioner's report was presented before the Court on 11 November 2024 and which states as under:

" ... That, since the appointment on 10.08.2023 as commissioner, the undersigned issued notice to the parties through their counsel. In response to the same, the plaintiff and defendant No. 3 had responded initially. That, for the thirteen dates upto 19.03.2024, none of the defendants made their appearance. Hence, in the meanwhile, court witness was called and his deposition was recorded as well as the cross of plaintiff's witness to defendant No. 3 was concluded.

That, hereafter, defendant No.1, made its appearance and cross examined the P-W-1. The same was concluded on 06.06.2024.

That, in response to warnings dated 21.05.2024 & 03.06.2024; the counsel for defendant No. 2 appeared and marked his attendance, however, the counsel for defendants 4 to 8, marked his attendance through with his junior and had made a telephonic talk with the undersigned. The main intention of the counsel, appeared to avoid the proceedings however, he was directed to appear today and must cross examine. In response to such directions, he appeared and after some arguments and filing a statement, he began with his cross examination to P-W-1. Further details of the conversation and their intention, are very much obvious from the diary sheet dated 06.06.2024.

That, on 09.09.2024, the defendants No. 4 to 8 further continued with the cross examination and thereafter, he sought adjournment as he intended to file an application before the Court against the witness for the reason that, according to his contention, the witness being an advocate could not appear as a

witness for the party to whom he had represented. The details are mentioned in the diary sheet dated 09.09.2024.

That, the defendants No 4 to 8, were allowed to move an application and granted with one month time, however, they had failed to intimate for filling any application rather, they had flatly refused to further cross examine the witness on 08.10.2024. It may be noted that upto 08.10.2024, no any application was filed by them

On 31.10.2024, the defendants No. 4 to 8 remained absent neither any Intimation was given for any progress. Hence, defendant No. 2 was invited to cross examine the witness. The defendant No. 2 cross examined the witness at length, and for want of time, the matter was adjourned to 13.11.2024

That, as per the mandate, undersigned is empowered to close the side of partly cross examination. any delinquent party, however, due to partly conducted by defendants' No.4 to 8, undersigned is reluctant to close the side and refer the matter to the Hon'ble Court for further appropriate orders against them for causing delay.

"Diary sheet since 06.06.2024 upto 31.10.2024 is attached herewith as ann. "A"."

Mr. Afaq Ahmed entered appearance on behalf of the Appellant and contended that the impugned order was passed in haste and instead time should have been granted to permit him to maintain such application. We have specifically enquired whether an application, as referred to in the Commissioners report, was pending in the suit on the date of the impugned order and if so as to whether it was brought on to the record of this Appeal. Regrettably, Counsel for the Appellant has been unable to satisfy the Court as to whether any application had been presented in the suit on the date of passing impugned order or as to whether any such application was pending in the Suit. Further, after perusing the file it is apparent that no such application has been brought onto the record of this Appeal. It would therefore seem to us that the Appellant was using such an objection as a tactic to delay the proceedings and which led to the Learned Single Judge passing the Impugned Order and which we, in the facts and circumstances, are not inclined to disagree with.

For the foregoing reasons we are of the opinion that this Appeal is not maintainable and which had caused us on 15 April 2025 through a short order to dismiss this Appeal and these are the reasons for the same.

Judge

Acting Chief Justice

Karachi dated 16 April 2025