

# IN THE HIGH COURT OF SINDH, KARACHI

Spl.HCA No.91 of 2024

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

14.04.2025

Mr. Shahzad Nizam, advocate for appellant.

Ms. Soofia Saaed advocate for Respondent No.1 a/w Umer Sikandar, advocate.

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## JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- This appeal calls into question an order dated 01.02.2024, passed by learned single Judge of this Court dismissing CMA No.2696 of 2022 and CMA No.2697 of 2022. CMA No.2697 was filed for restoration of applications: CMA No.112 and 113 of 2022 dismissed for non-prosecution on 25.10.2021 which were filed by appellant for detachment of his property on the ground of fraud on part of respondent in getting his property attached in execution proceedings arising out of a decree passed in a civil suit. CMA No.2696 was filed u/s 5 of Limitation Act, 1908, as CMA No.2697/2022 was prima-facie barred by time, for condonation of delay.

2. The record shows that CMA No.112 and 113 of 2020 were dismissed in non-prosecution after the same remained pending for a year without any progress. The impugned order reflects that applicant/appellant had sought time on various dates and indulgence was shown by granting him time. But then when it transpired that he had not even deposited cost and copies for the other side, the said application was dismissed in non-prosecution on 05.10.2021. In support of CMA No.2696 seeking condonation of delay, the only ground taken up was of medical emergency of the advocate who was appearing on behalf of the appellant and to whom purportedly a power of attorney had been issued by appellant to appear as his attorney as well.

3. Learned Single Judge has observed in the impugned order that even the said exigency does not pertain to the objector /appellant himself and secondly the said emergency had occurred prior to the dismissal order. He has further observed that it is a settled proposition of law that proceedings barred by even a day would be dismissed; once time begins to run, it runs continuously; a bar of limitation creates vested rights in favour of the other party; if a matter is time barred it is to be dismissed without touching merits of the case; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance. Learned Single Judge

has further stated that delay of each day is to be explained in an application seeking condonation of delay and that in absence of such an explanation the application would be liable to be dismissed. After such observations, the learned Single Judge has proceeded to dismiss both the applications, hence this appeal.

4. Learned counsel for the appellant has argued that a fraud has been committed with the appellant and that his property which has nothing to do with the decree passed in this suit has been attached. According to him, the cases are to be decided on merits rather than on technicalities. Learned Single Judge has failed to appreciate that delay was caused due to an accident of the advocate/attorney of appellant at Lahore, place of his original residence, and he was bed-ridden, hence he could not intimate the appellant about dismissal of his applications within time. He has drawn our attention to a medico-legal certificate available at Page No.323 which states that one Waqar-ud-din Khan, the attorney of the appellant, has remained under treatment since 10<sup>th</sup> November 2021.

5. On the other hand learned counsel for respondent No.1 has opposed this application.

6. We have heard the parties and perused material available on record. Learned Single Judge has quoted a number of case law in which it has been held that dismissal of an application in non-prosecution, if not challenged within time, creates a vested right in favour of the other party. In the present case the application filed for detachment of the property by the appellant was dismissed in non-prosecution on 25.10.2021. Whereas, the application for restoration of the same was filed on 24.10.2022, after almost one year. There is not a single explanation to cover the delay of one year, even the medical certificate heavily relied upon by the learned counsel for appellant does not help him, for the reasons it only shows that Waqar-ud-din Khan, the attorney of the appellant had met some accident in Lahore and was under the treatment since 10<sup>th</sup> November, 2021. Nothing is mentioned when his treatment ended and when he fully recovered, or that whether he was conscious and in proper senses and also able to communicate or not. Because, if he was conscious and in proper senses then the question would arise as to why he did not inform the appellant about dismissal of the applications through mobile phone or any other means. But if he was not in senses and was unconscious or otherwise, till what time he stayed under that

condition and when he gained senses firstly, would have been the relevant questions to ask to appreciate justification for appearing in Court with delay. Since nothing has been mentioned in the said medical certificate, no conclusions in respect of the purported assertions could be drawn in favour of the appellant. Be that as it may, except the copy of the medical certificate, no documents i.e. record of hospital, admission slip, and medical treatment to vouch for such facts have been filed.

7. Apart from above, the law requires that delay of each day is to be explained by the applicant to maintain his application for restoration of a lis/ cause dismissed in non-prosecution. In this case only a vague certificate has been filed in support of application seeking condonation of delay without explaining delay of each and every day. There is also nothing on record to show as to why the appellant himself failed to pursue his applications and/or file the restoration application against their dismissal in non-prosecution within time. The law is settled on this point that even a fault of an advocate/attorney to inform his client etc. within time about dismissal of his case will not be considered a valid ground to condone the delay in approaching the Court for setting aside such order.

8. We, therefore, have not been able to find any error in the impugned order, which has taken into count every aspect of the case and has observed in detail reasons supporting dismissal of the applications. Nothing extraordinary has been pointed out or pleaded by learned counsel for the appellant justifying reversal of the findings. Delay in approaching the Court creates certain rights in favour of the other party, which cannot be taken away on vague and unsatisfactory grounds, the likes taken in this appeal. We, therefore, find this appeal to be meritless and accordingly dismissed it.

The appeal is accordingly, disposed of.

**JUDGE**

**JUDGE**