

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

H.C.A. No.122 of 2016

[Habib Bank Ltd. Vs. Fawad Fazal & others]

Date of hearing : 28.04.2025

Date of decision : 28.04.2025

Appellant : Through Mr. Muhammad Ahmar, Advocate

Respondent No.1 : Through Mr. Tarique Ahmed Memon, Advocate.

JUDGMENT

MUHAMMAD IQBAL KALHORO J: This appeal questions an order dated 29.10.2015 dismissing an application under rule 159 of Sindh Chief Court Rules (OS) filed by appellant seeking setting aside of the order dated 31.05.2011 de-barring the appellant from filing written statement on their failure to abide by the time given to them in this connection by Additional Registrar.

2. The record shows that respondent No.1 filed a Civil Suit No.1397/2010 against appellant and others for declaration, permanent injunction and damages. In response to summons, defendants appeared and were granted time for filing a written statement by the Additional Registrar. On the next date viz. 18.03.2011, again on their application further time was granted to them for the said purpose and then again on 26.05.2011 on their request time was granted to them as a last chance. Subsequently on 31.05.2011 defendants were debarred from filing written statement by the Additional Registrar and the matter was referred to the court, as stated above. Against such order, aforesaid application was filed by the appellant on 13.05.2013 alongwith written statement. This application was taken up by learned single judge of this court and after hearing the parties dismissed the same by the impugned order.

3. We have heard the parties and perused material available on record including the case law cited at bar. Learned counsel for appellant has argued that appellant has been denied a fair opportunity of hearing on technical grounds as well as on the lopsided understanding of the directions given by a Division Bench of this court to the learned single judge to decide the suit expeditiously within six months; the impugned order is contrary to a well-established practice of this court allowing the cases to proceed on merits rather than disallowing the defendants from filing the written statement; learned Single Judge did not appreciate the fact that the plaintiff/respondent No.1 himself did not show any interest in the proceedings of the suit or

get it disposed of in the light of directions passed by a DB of this court, hence delay on the part of appellant was immaterial insofar as a decision of the case is concerned; learned Additional Registrar (OS) of this court has wrongly debarred the appellant from filing the written statement as on 26.05.2011 two weeks' time was granted to the appellant for filing the same but then after 05 days the order of debarring was passed by him; learned Single Judge has failed to exercise jurisdiction in the matter and without a justifiable cause or a reason dismissed the application; learned Single Judge has erred in assuming that a valuable right had accrued in favour of respondent/plaintiff due to failure of the appellant to file written statement within time; there is no statutory limitation on filing of written statement by the defendant; Rule 159 of the Rules is to be interpreted liberally in view of Article 10-A of the Constitution; to deprive the appellant from filing written statement is against well-established principles of law. Learned counsel has relied upon 2020 CLC 1475, 1989 CLC 1949, 2025 SCMR 395 and 1998 CLC 209.

4. Learned counsel for respondent No.1 has supported the impugned order.

5. Learned Single Judge while dilating upon merits of the application has observed in para 7 of impugned order as under:-

I have given due consideration to the submissions made by the learned counsel for the parties and have also examined the material available on record and the law cited at the bar. I have noticed that the order dated 11.05.2011 was passed by the learned Division Bench in the presence of the learned counsel for the defendants. Thus, the defendants were fully aware of the direction given by the learned Division Bench for deciding the Suit expeditiously within six months of reopening of the Court after summer vacations. It is an admitted position that despite being fully aware of the above direction, the present application along with the written statement was filed by the defendants on 13.05.2013 after two years of the aforesaid order. It is a matter of record that the application is supported by the affidavit of the Court Clerk of the defendants' learned counsel and not by any of the defendants. None of the defendants has come forward to explain or justify the reason for not filing the written statement within time or the long delay of two years in filing the present application and written statement. The only reason given on behalf of the defendants is that they could not file written statement due to unavoidable circumstances and non-availability of their officers. With profound respect to the learned counsel for the defendants, if his argument that the order debarring the defendants passed on 31.05.2011 could not have been passed before the expiration of two weeks, is accepted, even then there is no valid justification or explanation on record for not filing the written statement within the time allowed by the Additional Registrar as the last chance to them.

The aforesaid observations show that in an application for temporary injunction, appellant had filed a counter affidavit and was very much active in the proceedings. When the injunction application was dismissed, in the appeal against such order, the appellant was again present before the court and contested the matter. Finally, the said appeal was disposed of as withdrawn with directions to the learned Single judge to expedite the matter and dispose of it in six months. This direction was passed in presence of the appellant's advocate implying that appellant was well aware of the exigencies and the fallout involved in the matter.

6. So on one hand, appellant was fully participating in the proceedings of a miscellaneous application and was opposing it tooth and nail, and yet was not filing the written statement as required. On the contrary, appellant was continuously filing applications for seeking time to file written statement. The record reflects that atleast on four dates indulgence was shown to it and the time was granted. Ultimately on 31.05.2011, the appellant was debarred from filing the written statement.

7. In terms of Rule 159 of the SCC Rules, if any party desiring to have any question decided by the Registrar (OS) be referred to the court, may apply to the court within eight days of such order or within such further time as the judge for sufficient cause may allow even after expiry of eight days. In this matter, it is apparent that the application against the order of Additional Registrar debarring appellant from filing the written statement was filed after two years. In the application, no sufficient cause was shown for filing the same with such a long and shocking delay. The impugned order shows that the application was not even supported by an affidavit of any of the defendants rather the court clerk of the counsel, who was irrelevant person as far as providing any justification to delay-filing of application is concerned, came forward and filed an affidavit in support of the application. Even he failed to put up any explanation for filing the application with such a delay. Apart from directions of a DB to the learned Single Judge for expeditious disposal of the suit passed in presence of advocate for appellant entailing it to act upon it, the appellant was required u/o 8 rule 10 CPC to file the written statement within time or face the consequences. But it chose to stay dormant for two years and oblige the dicta of the law.

8. It is well established proposition that law favours vigilant and not indolent. In this case, no solid justification or reasonable ground has been cited by appellant except that due to unavoidable circumstances and non-availability of the officers, appellant, a bank, could not file the written statement within time. This ground cannot be given much weight and considered in the backdrop of two years unexplained delay in coming up with written statement.

9. Learned Single Judge has rightly observed that due to failure by the appellant to file the written statement within time as directed and taking unexplained two years to file an application under rule 159 of the SCC Rules and written statement, valuable rights have accrued in favour of respondent/plaintiff, which in the light of well-established principle of law enforcing limitation, cannot be taken away lightly. In the absence of any reasonable justification put up by the appellant to warrant a long delay in filing the application and the written statement, the period that meanwhile lapsed cannot be condoned and we, therefore, cannot take a different view than the one already arrived at by learned Single Judge. Then, in support of his view, learned Single judge has given cogent reasons leading him to a conclusion that

appellant due to unexplained long delay has lost its right to file the written statement and consequently a valuable right has accrued in favour of respondent No.1. Besides, it is not pointed out that what illegality or irregularity has been committed by learned Single Judge in arriving at the impugned conclusion which is supported by the solid reasons such as failure of the appellant even to support the application under Rule 159 of the SCC Rules by an affidavit of relevant person giving solid reasons for not filing the application in time.

10. Consequent to above discussion, we do not find any merit in this appeal and dismiss it accordingly.

The High Court appeal stands disposed of alongwith pending application.

JUDGE

JUDGE

A.K