

IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.

C.P.No.S-857 of 2011.

DATE	ORDER WITH SIGNATURE OF JUDGE
1. For order on office objections.	
2. For hearing of MA 5351/2014.	
3. For hearing of MA 5352/2014	

Date of hearing      03.09.2014.

Date of decision      08.09.2014

Mr. Noor ul Amin Sipio advocate for the petitioner  
Mr. Ghulam Mujtaba advocate for the respondent No.1.

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1.      This petition arising out of dismissal of rent appeal was filed in 2011. The only point involved in this case is that whether the appellate court has rightly dismissed the Rent Appeal filed by the petitioner as barred by limitation prescribed U/S 21 of Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) for filing an appeal against the order of Rent Controller.

2.      The record shows that this constitutional petition was presented on 30.12.2011 and interim injunction orders were obtained against the impugned orders. Thereafter this case is being prolonged on one or the other pretext and petition was dismissed for non-prosecution on 13.02.2014. The restoration application was filed on 14.05.2014 i.e. after three months and neither any application for condonation has been filed nor any explanation has been furnished by the learned counsel for such delay. However, counsel for the petitioner has agreed to argue main petition, therefore, without touching the merit of restoration application, the same is allowed.

3.      Heard counsel for the petitioner and the respondent and perused the record.

4      Brief facts leading to this petition are that the respondent No.1 had filed an application U/S 15 of SRPO, 1979 bearing R.A. No.04/2009 which was dismissed by the Rent Controller by order dated 07.02.2010. The respondent No.1 filed FRA No.01/2011, which was allowed and the case was remanded to the Rent Controller to decide the matter afresh after recording evidence of the

parties. Learned Rent Controller after recording evidence and hearing the parties, allowed the rent application by order dated 26.08.2011 with directions to the petitioner to vacate the premises within 60 days. Thereafter petitioner preferred appeal before the appellate court after inordinate delay beyond limitation and therefore, the appeal, was accompanied with an application U/S 5 of the Limitation Act, 1908 for condonation of delay in filing that Rent Appeal. After hearing the counsel of the parties, learned Ist appellate court dismissed the rent appeal No. 04/2011 as well as condonation application by a common order dated 14.11.2011 holding that the appeal was time barred. The relevant portion of the impugned order of the appellate court is reproduced as under:-

“In this respect he produced a certificate of the Medical Officer, who is simply MBBS not a cardiologist and according to certificate of doctor he was under treatment of Medical Officer, therefore, the ground taken by the appellant is not healthy ground, which shows that he is unable to file appeal within time. Under such circumstances the rent appeal of the appellant is dismissed in limini with no order as to costs.

5. The main contention of the counsel for the petitioner was that the impugned order of the appellate court suffers from misreading of medical certificate produced by the appellant in support of his claim that he was indisposed to justify the delay in filing of rent appeal. He though relied upon the medical certificate to justify delay in filing appeal before the appellate court but he has not produced such medical certificate before this court in support of petitioner's claim of indisposition. However, from the perusal of the impugned order, it is revealed that the petitioner claimed that he was heart patient and was under treatment therefore, could not file the appeal within time. Learned appellate court has discussed the medical certificate and observed that petitioner claimed to be cardiac patient but he was not under treatment of Specialist of Cardiology and he was not an indoor patient.

6. I have also examined the application for condonation of delay filed by the petitioner before the Ist appellate Court which is available at page 145 of court file. The petitioner has failed to give account of each and every day of delay in filing appeal. The petitioner has not mentioned exact period of delay and even dates have not been mentioned to compute the time of delay sought to be condoned. Such a casual application for condonation of delay in filing an appeal after expiry of statutory period for filing an appeal ought to have been dismissed. Therefore, in my humble view, the learned appellate court has rightly found medical certificate insufficient to condone that delay irrespective of the fact that the law of Limitation does not apply in rent proceedings.

7. In view of the above discussion, this constitution petition is dismissed and the petitioner is directed to vacate the premises within thirty days. In case of his failure, the Rent Controller, Kotri who is seized of Execution Application No.09/2011 shall issue writ of possession forthwith on expiry of (30) thirty days time from today (08.09.2014) with police aid without notice to the petitioner. Listed MA 5352 stands disposed of.

JUDGE

A.K