

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

C.P.No.S-306 of 2006.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of MA 1211/2006.
2. For Regular hearing.

28.08.2014.

Mr. Abdul Razak Leghri advocate for the petitioner
Rao Faisal Ali advocate for the respondent No.1.

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1. This petition is pending since 2006. The only point involved in this case is that whether the appellate court has rightly dismissed the FRA filed by the petitioner after inordinate delay beyond limitation prescribed U/S 21 of Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) for filing an appeal against the order of Rent Controller.

2. Brief facts leading to this petition are that the respondent No.1 had filed an application U/S 8 of SRPO, 1979 being R.A. No.17/1995 which was disposed of on 11.01.2005, after almost 10 years by an elaborate Judgment enhancing the monthly rent of the premises from Rs.530/- to Rs.800/- only. Against this order dated 11.01.2005, an appeal was preferred on 16.02.2005. Learned counsel for the petitioner alongwith his appeal, also filed an application U/S 5 of the Limitation Act, 1908 for condonation of delay in filing Rent Appeal. After hearing the counsel of the parties, learned Ist appellate court dismissed the rent appeal No. Nil/2005 by an order dated 26.04.2006 holding that the appeal was time barred. The relevant portion of the impugned order of the appellate court is reproduced as under:-

õSince the Limitation being a matter of statute can not be waived. The legal system dealing with the limitation makes it imperative on the court to see that no cause beyond the period of limitation is entertained without proper scrutiny therefore, it is permanent duty of the court to examine the appeal and to ensure that the matter is not entertained which is barred by Limitation. Period of 30 days for filing an appeal is provided under S.21 of Sindh Rented Premises Ordinance, 1979, which is a special law. Provisions of S. 5 Limitation Act may not applicable for condonation of delay in such proceedings. In the case of Syed Muhammad Versus. Mazhar Ali Khan reported in P.L.D 1981 Kar. 76, it was held that provisions of S.5, Limitation Act, is not applicable to appeal under s.21

of Sindh Rented Premises Ordinance. In the light of above circumstances, I do not find any merits to instant application, therefore, appeal is dismissed as time barred.ö

3. 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 has also drawn my attention to the medical certificate which was relied upon by him in support of petitioner's claim of indisposition, it is available at page 111 of the court file. I have also examined this document. It is dated 08.02.2005 and according to learned counsel this document indicate that the petitioner was admitted in medical ward of Muhammadi Medical College Hospital Mirpurkhas. The medicine prescribed on medical certificate is one Syp. Magnopyrol and one tablet Malazon. It does not disclose the reasons for admission of the patient in the Hospital nor it disclosed the ailment and that for how long he remained in the Hospital. Therefore, in my humble view, the learned appellate court has rightly found it insufficient to condone delay despite the fact that the law of Limitation does not apply in rent proceedings.

4. The record shows that even this constitutional petition was presented on 07.09.2006 and interim injunction orders were obtained against the impugned orders dated 26.04.2006. Thereafter this case is being prolonged on one or the other pretext.

Therefore I feel it necessary to point out the delay even this petition was filed after unexplained delay of more than four months i.e. 130 days of obtaining certified copies. The impugned order is dated 26.04.2006. Petitioner applied for certified copies on 02.05.2006 and received copies on 08.05.2006 and filed instant petition on 07.09.2006. the interim order against the order of enhancement of rent is filed after more than eight years. Neither office raised objection nor there appears to be any justification of such inordinate delay in challenging the appellate order. There is no limitation, however, it suffers from laches.

5. Learned counsel for the petitioner has not argued any other point in support of his contention that the findings of the appellate court were contrary to this document and therefore, this petition should have been allowed according to the learned counsel.

When asked about the case law reported in PLD 1981 Karachi 76 (Syed Muhammad Vs. Mazhar Ali Khan) which has been relied upon by the learned appellate court in support of the dismissal order of the rent appeal, learned counsel for the petitioner did not show any cavil to this citation.

6. Learned counsel for the respondents in addition to the case law referred in the impugned order has have also referred to the case law reported in 1980 SCMR 782 (Bhoop Khan Vs. Additional Settlement commissioner (land) and 2002 SCMR 1540 (Muhammad Nazir Vs. Saeed Subhani) on the point of applicability of limitation in rent proceedings which supports contention of the respondents.

7. In view of the above discussion and with the above observation, this petition is dismissed with no order as to costs.

JUDGE

A.K