

# IN THE HIGH COURT OF SINDH, KARACHI

Civil Revision Application No. 207/2012

Applicant: Muhammad Anwar through  
Mr. Mohammad Abid Rajput advocate

Respondent # 1. Abdul Sattar through  
Mr. Abdul Matin Khan advocate

Respondent # 2. Abdul Jabbar in person

Date of hearing: 27.01.2015

Date of judgment: \_\_\_\_\_

## **JUDGMENT**

**ABDUL MAALIK GADDI, J:-** The applicant is aggrieved by the order dated 19.11.2012 passed by learned Ist Additional District Judge, Karachi Central whereby she dismissed Civil Appeal No.69/2012 filed by the applicant against the judgment and decree date 30.1.2012 passed by the IInd Senior Civil Judge, Karachi Central in Civil Suit No.419/2005 filed by legal heirs of respondent No.1 who by said order decreeing the said suit as prayed with no order as to cost.

2. Brief facts of the case, relevant for the purpose of disposing of this civil revision are that the legal heirs of respondent No.1 filed suit for declaration and possession against the applicant and respondent No.2 stating therein

that their father namely Abdul Sattar was the lawful allottee of property bearing House No.2/59, Liaquatabad, Karachi vide lease deed Registration No,593 dated 31.01.1995 issued by the K.M.C. and since then they are in possession of the suit property. It is stated that other brother of Abdul Sattar namely Abdul Ghaffar, applicant and respondent No.2 who are minor at that time were needed the accommodation hence their father provided one room and request was made to Abdul Ghaffar to vacate the room but he refused to vacate the same, hence Civil Suit bearing No.3651/1981 for possession was filed in the Court of Ist Senior Civil Judge, Karachi which was decreed resultantly Abdul Ghaffar vacated the room. It is also stated that applicant and the children of respondent No.1 are major hence legal heirs of respondent No.1 requested the applicant and respondent No.2 to handover the room in their possession but they refused hence the legal heirs of respondent No.1 filed civil suit for declaration and possession.

3. Applicant and respondent No.2 have filed their joint written statement stating therein that they are real brothers of each other. Property in question was belonging to their father namely Kulla as such they are all legal heirs of the property in question as co-owner. It is the case of applicant that Abdul Sattar after dismissal of Suit No.3651/1981, fraudulently, with malafide intention got lease in his name in the year 1995 which is illegal, forged

and liable to be cancelled. It may be mentioned here that no suit for cancellation of lease in favour of respondent No.1 has been filed by applicant.

4. Learned IInd Senior Civil Judge, Karachi Central upon the pleadings of the parties framed as many as eight issues and recorded the evidence of the parties and their witnesses.

5. It may be mentioned here that in support of their case legal heirs of respondent No.1 has examined Abdul Qadir, Muhammad Ishtiaq and Ehtisham-ul-Huq. They have supported the case of respondent No.1 by producing the allotment order/lease document in favour of respondent No.1 but they have not been cross-examined by the applicant or respondent No.2 despite given them ample opportunities. There is only evidence of the son of applicant namely Mohammad Iqbal Sultan is on record and this witness has been cross examined by advocate of respondent No.1. As per record it appears that the learned IInd Senior Civil Judge after perusing the evidence and documents on record decreed the suit of respondent No.1 which was maintained by the learned Ist Appellate Court on the ground that appeal filed by applicant was time barred. Hence this civil revision.

6. It is contended by the learned counsel for applicant that the applicant is an illiterate old man, who is residing in the subject property since very inception as the same

was allotted to his father, whereas, respondent No.1 namely Abdul Sattar, who is real brother of applicant has managed to get subject property transferred in his name fraudulently. Per learned counsel, the learned trial Court did not examine evidence produced by the parties and has decreed the suit filed by respondent No.1 seeking possession of the property on the basis of fraud and fraudulent transfer. It is further contended that an appeal was filed by applicant which has been dismissed on the point of limitation inspite of fact that an application under Section 5 of the Limitation Act stating therein reasonable grounds for such delay was also filed by the applicant but the learned 1<sup>st</sup> Appellate Court did not consider the same in its true scenario and dismissed the appeal without assigning any good reasons. Therefore, through this revision application the applicant has challenged the impugned orders of two courts below by taking the plea that during the trial before the learned IInd Senior Civil Judge, the applicant had not been given proper opportunity to cross-examine the witnesses of respondent No.1, although applicant had good case in his favour, therefore, he has prayed for allowing the civil revision.

7. Respondent No.2 who is present in person has also been heard. However, he has adopted arguments of counsel for the applicant.

8. Conversely, learned counsel for respondent No.1 has supported impugned orders of the two Courts below. He submitted that there are concurrent findings of the two courts below and it has not been shown that any of the findings is against evidence on record. Learned counsel further submitted that the trial Court as well as appellate Court have given cogent reasons in support of their findings and impugned orders of two court below do not call for any interference of this court and has prayed that this civil revision application may be dismissed on the additional ground that the appeal filed by the applicant before the 1<sup>st</sup> appellate Court was hopelessly time barred but this civil revision has been filed by the applicant just to gain the time to retain the possession of the demised premises without any justification.

9. I have given my anxious thoughts to the contentions raised at the bar and have gone through the pleadings of the parties, documents and evidence whatever available on record.

10. It is a case of the legal heirs of respondent No.1 that they are owners of the premises in question through a valid Registered Lease dated 31.01.1995 executed by the Karachi Metropolitan Corporation in favour of Abdul Sattar which is still intact. However, it is the case of applicant and respondent No.2 that they are brothers of said Abdul Sattar. They are co-owners, but Abdul Sattar

with malafide intention and after dismissal of Civil Suit No.3651/1981 had fraudulently and with malafide intention got lease of the premises in question in his name in the year 1995 which is illegal but in this connection admittedly they have not filed any suit for cancellation of lease deed in favour of the respondent No.1. It also appears from record that after filing joint written statement the applicant and respondent No.2 did not appear before the trial court to substantiate their claim by producing evidence. However, one Mohammad Iqbal Sultan examined himself without producing any authority authorizing him to give evidence on behalf of applicant even otherwise his evidence on record appears to formal in nature. He did not disclose any material thing except that lease in favour of respondent No.1 is illegal, therefore, in such circumstances his evidence is not helpful for applicant.

11. As observed above that applicant and respondent No.2 after filing written statement did not lead evidence, therefore, joint written statement of the applicant and respondent No.2 are only statement of facts and cannot be treated as evidence. In this regard, I am supported with case of Mohammad Bashir and others V/S Iftikhar Ali and others reported in PLD 2004 Supreme Court 465.

12. Moreover, evidence of legal heirs of respondent No.1 available on record in which they have stated that they are

owners of the premises in question, the premises in question was allotted to their father and in this regard they have produced copy of lease deed of the premises in question which has not been challenged by the applicant and respondent No.2 as they have not cross examined the witnesses of the legal heirs of respondent No.1, hence the contention of respondent No.1 goes to un-rebutted and un-challenged, therefore, in view of the above circumstances the applicant and respondent No.2 failed to prove that the lease deed obtained by the respondent No.1 is illegal and obtained through illegal means. Even otherwise, it appears from record that the lease deed in favour of respondent No.1 was issued by the competent authority after observing all legal and codal formalities. In these circumstances, I am of the view that learned trial court vide its order dated 30.01.2012 was justified to decree the suit of the legal heirs of respondent No.1

13. In this case decree was also prepared on the same date but applicant filed appeal on 16.5.2012 accompanied with an application under Section 5 of the Limitation Act, praying therein to condone the delay in filing of appeal on the ground that applicant was seriously sick and was bedridden, therefore, he could not file appeal in time.

14. From perusal of record it appears that civil appeal was filed by the applicant against judgment and decree dated 30.01.2012 on 16.05.2012 much after expiry of

appeal period with application under Section 5 of the Limitation Act, 1908.

15. Under the law each day's delay is to be explained. Section 3 of the Limitation Act, 1908 imposes a mandatory duty upon Court to dismiss a suit, appeal or an application if it has been instituted after prescribed period of limitation and a party wishing to take advantage of Section 5 of the Limitation Act, it must therefore satisfy the Court that it had not been negligent and had been presenting its case with due diligence and care.

16. I have gone through the case of Shaikh Muhammad Saleem v. Faiz Ahmed (PLD 2003 SC 628). In this case law it has been held that person seeking condonation of delay must explain delay of each and every date to the satisfaction of Court and should also establish that delay had been caused due to the reasons beyond his control. Similar point has also been taken in the case of Messrs.' Tribal Friends Co. v. Province of Balochistan (2002 SCMR 1903).

17. In view of cited case law, now I take up the grounds of condonation whether the same having sufficient cause to condone the delay for filing of appeal before appellate Court as asserted by applicant.

18. Muhammad Anwar in Para 3 of his affidavit disclosed that on 10.02.2012 he failed to file appeal as he was sick and remained confined to bed and was not in



position to file appeal in court. He annexed two medical certificate of Urban Health Centre North Karachi dated 25.5.2012 and another of same centre of dated 15.2.2012 to 15.4.2012 for bed rest, both certificates were issued from North Karachi while applicant is residing in Liaquatabad Karachi, how a patient of backache could arrived North Karachi to obtain certificate of bed rest for about months as outdoor patient. The reason given for delay in filing appeal was not reasonable and sufficient. It is a matter of record that applicant contested suit properly, by filing written statement and then disappeared after grant of decree of suit in favour of respondent No.1 which shows that he was not interested to file any appeal. He filed appeal after delay of about 5 months which has not been satisfactorily explained.

19. In view of the above facts and circumstances of the case no, illegality and incorrectness have been found in the impugned orders/judgments passed by two courts below. Both the courts below have appreciated all the points involved in this case. No illegality has been pointed out. I, therefore, find no merit in this civil revision application which is dismissed alongwith listed applications.

**JUDGE**