

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

F.A.O. No.231 of 2019
National Highway Authority
Versus

M/s Sardar Muhammad Ashraf D. Baloch (Pvt.) Limited

Appellant by: Barrister Muhammad Hassan Alam,
Advocate

Respondent by: Mr. Babar Ali Khan, Advocate.

Date of 17.02.2020.

Decision:

FIAZ AHMAD ANJUM JANDRAN, J.- This Appeal under section 104, Order XLI of the Civil Procedure Code read with section 39 (vi) of the Arbitration Act, 1940 is directed against the Judgment & Decree dated 15.05.2019, passed by learned Civil Judge 1st Class, Islamabad-West, whereby appellant was directed to pay an amount of Rs.17,236,903/- in the light of Award dated.27.01.2017 and Revised Award dated 12.10.2018 passed by the learned Arbitrator.

2. Along-with the appeal, an application (CMA No.3 of 2019) under section 5 of the Limitation Act has also been filed seeking condonation of delay in filing the appeal, being decided through this order.

3. The grounds being pressed to condone the delay *inter-alia* are that the appellant came to know of the impugned order after commencement of execution proceedings on receipt of notice issued by the learned executing Court; that non-appearance was due to fault of the counsel which was subsequently changed. According to the learned counsel, application for provision of

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certified copies was filed on 30.11.2019 and immediately thereafter present appeal was filed. The delay, according to the learned counsel, was neither intentional nor deliberate therefore, may be condoned.

4. As against above, learned counsel for respondent argued that inordinate delay without plausible and reasonable explanation cannot be accepted. It is further asserted that the reason advanced being vague, evasive and without corroboration through any material cannot be condoned as a legal right has been created in favour of respondent which cannot be taken away in casual manner. Learned counsel placed reliance upon case law reported as *2016 CLC 624 and 2000 SCMR 706 {Member Board of Revenue. Vs. Farooq Ahmad and others}*.

5. Heard the learned counsel for the parties and examined the record with their able assistance.

6. An appeal against the Award, made Rule of the court is to be filed within ninety days of the passing of the Judgment & Decree. In order to determine the delay in filing the appeal, the events in this respect are condensed hereunder:-

Date of passing of the impugned judgment,	15.05.2019.
Application for provision of certified copies,	30.11.2019.
Copies prepared and ready for delivery,	16.12.2019.
Appeal was filed,	17.12.2019.

7. The ground of negligence of the counsel and of misinformation is not a recognized excuse as laid down in case reported as *Ghulam Hussain Ramzan Ali. Vs. Collector of*

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Customs (Preventive) Karachi {2014 SCMR 1594} wherein, it is held that:-

“Gross negligence was exercised in not bothering for at-least seventy days to find out as to why the decision had not reached his office. The learned High Court in the impugned judgment has discussed the delayed filing in detail and reached the right conclusion that the case was hopelessly time barred.”

8. It is an admitted position that the appellant filed application for provision of certified copies after lapse of more than six months of passing of the impugned judgment. It is settled principle of law that limitation once started does not stop while, as mentioned above, in the present case, the application was filed much beyond the statutory period of ninety days on 30.11.2019 i.e. after more than three months of the passing of statutory period. It is thus concluded that the present appeal is hopelessly time barred. The appellant being public functionary had to remain more vigilant and such gross negligence on the part of government functionaries cannot be taken lightly. The Hon’ble Apex Court in case reported as *Province of Punjab. Vs. Sheikh M. Riaz Shahid {2005 SCMR 1435}* held that:-

“The inordinate delay in filing of the appeal before the learned High court was only a result of gross negligence on the part of the irrigation department which sat over the matter for more than sixteen months before approaching the Solicitor for filing of the appeal. We find it absolutely impossible for us to condone such negligence on the part of government functionaries and no exception could, therefore, be taken in the impugned judgment of the Lahore High Court.”

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9. The vague and evasive stance cannot be held sufficient to condone inordinate delay in filing the present appeal. It is, thus, held that present application lacks merits, accordingly declined. Consequently, main F.A.O. is dismissed being time barred.

(MIANGUL HASSAN AURANGZEB) (FIAZ AHMAD ANJUM JANDRAN)
JUDGE *JUDGE*

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