

Form No: HCJD/C.

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Civil Revision Petition No. 25 of 2015

Fazal-e-Qadir and five others

Vs.

Muhammad Azam

Petitioners by: Mr. Jam Khursheed Ahmed, Advocate.
Respondent by: Raja Yasir Shakeel Janjua, Advocate.

Date of Decision: 04.02.2015.

Today C.M. No.1/2015 was fixed but both learned counsels for the parties, present in the court, requested that they have no objection if the main case is taken up for final arguments. In view of the request of learned counsels for the parties main case is taken up today.

AAMER FAROOQ, J.- Through the instant civil revision the petitioners have assailed order dated 20.01.2015, passed by the learned Additional District Judge-V (West), Islamabad.

2. The brief facts leading to filing of the instant civil revision are that the respondent is neighbour of the petitioners and is owner in possession of his land measuring 10 *marlas* bearing *Khewat* No.11, *Khatooni* No.29, *Khasara* No.628, situated at *Pind Parian*, Islamabad facing towards eastern side. The respondent has a room alongwith the shops of the petitioners. The respondent with ulterior motive installed a shutter towards the shops of the petitioners. The respondent filed a suit for permanent injunction against the petitioners/defendants seeking to restrain them from interfering in his possession and making any kind of hindrance. The petitioners appeared and contested the suit by filing written statement, however, the suit was decreed in favour of the respondent. The judgment and decree passed by the learned Trial Court was challenged in appeal, by the petitioners, which was dismissed vide the impugned judgment and decree dated 20.01.2015, as being barred by limitation.

3. Learned counsel for the petitioners submitted that impugned judgment dated 20.01.2015 as well as judgment and decree dated 29.09.2014 are against the law and facts. Learned counsel further submitted that no reasonable opportunity was granted by the learned Trial Court to the petitioners to cross-examine the plaintiff witnesses and produce their own; that neither the petitioners nor their counsel put their appearance but the learned Trial Court

wrongly marked the attendance on behalf of the petitioners. It was also contended that the petitioners were not in contact with their counsel who did not inform them about the case being ripe for evidence and subsequently regarding passing of the judgment and decree by the learned Trial Court, hence filed the appeal beyond the period of limitation prescribed under the law. Learned counsel in support of his contentions relied on case titled *M. Asif Ali Khan v. Ghulam Shabbir* (2010 YLR 507) and *Hassan Abbas v. Ist Additional District & Sessions Judge* (2014 YLR 2042) to substantiate his assertion that a party is not to be penalized because of lack of communication with its counsel.

4. Learned counsel for the respondent submitted that the petitioners were given ample opportunities to cross-examine the witnesses of the plaintiff/respondent but adjournments were sought by their counsel for one reason or the other and then opportunities were also granted, by the learned Trial Court, to the petitioners to adduce their evidence however, the same was not done and the learned Trial Court passed judgment and decree in favour of the respondent. Learned counsel further submitted that the counsel for the petitioners was present at the time of final arguments and the same is reflected in the judgment and decree and therefore, had the knowledge of the passing of decree, therefore, filing of the appeal beyond the period of limitation cannot be condoned. In support of his contentions learned counsel for the respondent relied upon **2013 CLC 254, 2014 PLC (CS) 12, 1998 MLD 416 and 2013 YLR 375.**

5. The civil revision under section 115 of Code of Civil Procedure, 1908 lies where the Court had jurisdiction but did not exercise it, the Court did not have jurisdiction but exercised it or there was material irregularity in the exercise of jurisdiction. The petitioners are aggrieved of the judgment and decree passed by the learned Trial Court as well as judgment of the first Appellate Court. In the Trial Court the decree was passed against the petitioners as they did not cross-examine the witnesses of the plaintiff/respondent and also as they did not adduce their evidence. The examination of order sheet of the learned Trial Court reflects that the evidence of the plaintiff/respondent was recorded on 05.04.2014 and thereafter the case was fixed on 18.04.2014 and then on 03.05.2014, on which date, though the clerk of the learned counsel for the defendants was present but counsel did not cross-examine the witnesses. The case was then fixed for defendants' evidence on 27.05.2014, on which date notice under Order XVII Rule 3 CPC was issued with the direction to the defendants to adduce the evidence. On 16.06.2014 the learned counsel for the defendants sought time for production of evidence and thereafter the matter was adjourned to 10.07.2014 and then to 21.07.2014. On

10.09.2014 again the clerk of the learned counsel for the defendants was present and the learned Trial Court closed the right of evidence of the defendants and fixed the case for final arguments. At the time of addressing of arguments as well as passing of the decree, learned counsel for the petitioners/defendants has been marked present. No affidavit was filed with the appeal to indicate that the learned counsel for the petitioners/defendants was not present. The judgment and decree was passed on 29.09.2014 whereas the appeal was filed on 29.11.2014. The period of limitation prescribed for filing of appeal before the District Court is 30 days under Article 152 of the Schedule to the Limitation Act, 1908. The application for certified copy of the judgment of the learned Trial Court was made on 28.11.2014 and the appeal was filed on 29.11.2014, therefore, the appeal was barred by limitation for almost one month and the same was dismissed by the first Appellate Court solely on the ground of limitation.

6. The only reason offered by the petitioners in the application for condonation of delay, under section 5 of the Limitation Act was lack of communication and coordination between the counsel and the client. The contention of learned counsel for the petitioners that the judgment and decree passed was without jurisdiction as under Order XVII Rule 3 CPC the Court was to decide the case forthwith after notice is without any force inasmuch as the plain reading of Order XVII Rule 3 CPC indicates that the Court may proceed to pass the decree forthwith and in this behalf a discretion is vested with the Court. The fact that the learned counsel for the petitioners did not inform them about the passing of the decree, even if correct, does not absolve petitioners in the matter, as the case was pending in the Trial Court for a considerable period of time and it was their duty to be in touch with the counsel to know about the progress of the case. Moreover, there is ample case law that the parties are bound by acts and omissions of their counsels and lack of communication and coordination between the client and his counsel cannot be construed as sufficient cause for condoning the period of limitation. In this behalf in the case titled *Irshad Ahmed Shad v. Pervez Akhtar* (2013 CLC 254) it was observed as follows:

"It is a settled principle of law, which has been consistently held and followed by the Superior Courts, that the parties are bound by the acts and omissions of their counsel, and that in case of any negligence on the part of the counsel, the parties cannot claim that they are not to be held responsible. Another well-established principle of law is that when a matter is dismissed or any adverse order is passed, valuable rights accrue in favour of the other side which cannot be taken away unless a justifiable, strong or sufficient cause is shown. The above vies expressed by me are fortified by the following authorities:

1974 SCMR 223:

"Muhammad Nawaz and 3 others v. Mst. Sakina Bibi and 3 others.

Paragraph 3 at pages 223 and 224

"3. Even if the above explanation is to be taken at its face value, it would not constitute a sufficient cause for the condonation of long delay that has taken place in the instant case. The initial obligation was of the petitioners to enquire about the decision in their appeal, or to arrange with their counsel to inform them about the decision if it is announced in their absence. Even if it be assumed that their counsel neglected to inform them that per se would not be a sufficient ground for condonation of delay, when a valuable right has accrued to the respondents 1 to 3. We are not satisfied that the petitioners were diligent or took due care in the matter."

PLD 2006 Kar. 252 (Sindh High Court-Division Bench)

Zahid Ahmed v. Deputy Director Adjudication and 2 others

Paragraph 19 at page 258

"19. From the careful examination of the authorities, it is unanimous opinion of the Hon'ble Supreme Court of Pakistan that any negligence on the part of the advocate of the party is binding upon him and if he engages a counsel who is lacking sense of responsibility to the Court, it is he who should suffer and not the other side....."

In another case titled *Qari Abdul Khaliq v. the State* (2013 YLR 375)

it was observed as under:

"It is the duty of a party to litigation to keep him informed regarding the proceedings and progress of the matter and it is also his duty to remain in touch with his counsel and if the counsel is negligent, it is he who should suffer. It is well-settled that in civil matters, on expiry of limitation, valuable rights accrue to the other side which cannot be taken away lightly except on making out a case of sufficient cause explaining the delay of each day. Mere engagement of counsel does not absolve any party from their responsibility to prosecute their cases properly. His failure to pursue the case with due diligence will not entitle him to seek indulgence of the Court. Negligence of counsel is the negligence of party because he acts merely as an agent. A party wishing to take advantage of section 5 of the Limitation Act must satisfy the Court that it has not been negligent rather pursuing his case with due diligence and care. Negligence on the part of counsel does not constitute sufficient cause to condone the delay where valuable rights have accrued in favour of the other party."

7. The case law relied upon by the learned counsel for the petitioners is distinguishable as it shows that the party seeking condonation of delay had taken action against their counsel. In the present case no such action has been taken and the affidavit of the lawyer has also not been appended to lend support to the veracity of

the assertions made for seeking condonation of delay in filing the appeal. The preponderance of the case law is to the effect that lack of communication between counsel and client is no ground for condonation of delay.

8. The petitioners have failed to show in the instant civil revision any material irregularity in exercise of jurisdiction by the first Appellate Court. Therefore, the instant civil revision is devoid of merits and is dismissed.

(AAMER FAROOQ)
JUDGE

*M. Naveed

Blue slip added

Approved for Reporting