

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

C.R.No.277/2018

PAKISTAN HOUSING AUTHORITY.

Versus

MUHAMMAD IMRAN.

Petitioners by: **Mr. Salman Saeed, Advocate**

Respondent by: **Rais Mumtaz Hussain, Advocate.**

Date of Hearing: **02.09.2020**

LUBNA SALEEM PERVEZ; J. Instant Revision u/s 115 Cr.P.C has been preferred against the judgment dated 11.07.2018, passed by learned Additional District Judge-VII (West) Islamabad, whereby, petitioner's appeal was dismissed. The said appeal was filed before him against order of the learned Civil Judge-West, Islamabad, who vide order dated 29.03.2018, dismissed the application of the petitioner filed under Order IX Rule 13 for setting aside ex-parte judgment and decree dated 14.06.2016.

2. Briefly stated facts involved in the matter are that Respondent filed suit for declaration, permanent and mandatory injunction against the Petitioner, which was ex-parte decreed in Respondent's favor vide ex-parte judgment and decree dated 14.06.2016. Petitioner, being aggrieved of the same, preferred application u/o IX Rule 13 CPC, which was also dismissed by the learned trial Court, vide order dated 29.03.2018. Against said order, petitioner filed appeal but same was also met the same fate, vide impugned order dated 11.07.2018, passed by the learned Additional District Judge-VII (West), Islamabad. Hence, instant civil revision petition.

3. Learned Counsel for Petitioner, *inter-alia*, contended that both the learned courts below have dismissed the application as well as petitioner's appeal in the light of the Article 164 of the Limitation Act, 1908, holding it to be time barred, without considering the fact that the delay was not intentional; that the petitioner's counsel suddenly went abroad without apprising the petitioner regarding the status of its suit and they came to know about the ex-parte judgment/decreed, when respondent filed a revision petition in this Court for correction of address of suit plot; that the learned trial court passed an ex-parte decree without adhering to the common principle of law that no one should be condemned unheard; that as per law laid down by the

superior courts of the country cases are to be decided on merits rather on technicalities. Learned counsel, therefore, prayed for acceptance of instant civil revision petition and setting aside impugned order dated 11.07.2018.

4. On the other hand, learned Counsel for Respondent supported the impugned judgment as well as ex-parte judgment and decree being justified as well as lawful and prayed for dismissal of instant Civil Revision.

5. I have heard the learned Counsel for the parties and perused the impugned judgment and order.

6. After filing power of attorney and written statement and after that ample opportunities to argue the case were granted to the petitioner but on failure ex-parte proceedings were initiated against the petitioner and ex-parte judgment and decree was passed on 14.06.2016. Said judgment and decree was challenge after gaining knowledge of passing of order vide application u/o IX Rule 13 CPC. The application against the said ex-parte judgment and decree under order IX Rule 13 was submitted by the petitioner on 20.05.2017, almost after a period of one year, which was dismissed as being badly barred by limitation. Later, petitioner's appeal against the said order was also dismissed vide impugned judgment dated 11.07.2018, on the point of limitation.

7. It is observed that Petitioner is a government entity who had thirty days time to challenge the ex-parte judgment and decree dated 14.06.2016 but it filed application after lapse of almost one year i.e. on 20.05.2017. Moreover, conduct of the petitioner during the proceedings in suit was also very lethargic which left the learned trial Court with no other option but to pass an ex-parte judgment/decreed in favor of Respondent. The sole ground taken by the petitioner before this Court as well as learned courts below for the inordinate delay in filing the application u/o IX rule 13 CPC is that their learned counsel went abroad without apprising about the fate of the suit, which stance is totally unacceptable as in government departments there are separate units/branches with staff to pursue the court cases and additionally several lawyers are also taken on their panel in this regard whose professional fee are paid out of the public exchequer. A proper record of follow up, pending and disposal of each and every court case is properly maintained in that branch. Thus, the ground taken by the petitioner before the learned courts below regarding the delay in filing application u/o IX Rule 13 CPC is totally unjustified rather such approach on the part of government entities is totally uncalled for. Moreover, principle has now been settled that the courts always help the vigilant and not the persons who are negligent in pursuing their matters.

8. Admittedly, the appeal was filed after lapse of statutory time allowed. The delay in filing appeal due to counsel's negligence cannot be considered as sufficient

cause as it has been held in plethora of judgments that delay in filing is due to administrative delay by government / departmental functionaries held to be no sufficient reason for condonation of delay. The departmental/government functionaries cannot be accorded preferential treatment on the question of limitation and before embarking into merits of the case bar of limitation is to be addressed by explaining each and every day's delay through sufficient and convincing reasons to the satisfaction of the Court. Reliance in this regard is placed on **Blue Star Spinning Mills Ltd. Vs Collector of Sales Tax (2013 SCMR 587)** and **Assistant Administrator, Evacuee Trust Property Vs Muhammad Ayub (2003 SCMR 841)**.

9. In view of above, I am of the considered view that Learned Counsel for the petitioner failed to point out any illegality, perversity and jurisdictional defect in the impugned judgment and order which, as such, are condition precedent for interference, hence, no interference is called for and instant Revision Petition, being meritless, is hereby dismissed.

(LUBNA SALEEM PERVEZ)
JUDGE

Adnan/*

Announced in open Court on 9th day of September, 2020.

Judge.