

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Second Appeal No.52 of 2023

DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

Directios

For orders as to Maintainability s Order dated 08.03.2023.

15.04.2026.

Mr. Liaquat Ali Khan, Advocate for the Appellant.

None present for the Respondent.

Through this Appeal, the Appellant has challenged both the Orders of the Courts below, dated 18.01.2023, passed in Civil Appeal No.201 of 2022, and Order dated 08.12.2022, passed in Civil Suit No. Nil of 2022 [“**Impugned Decisions**”], whereby, the Plaintiff of Suit filed by the Appellant was rejected under Order VII Rule 11 of CPC, on the ground that the same is time barred in view of Article 57 of the Limitation Act, 1908 [the “**LA**”]; *whereas*, the Appellate Court has dismissed First Appeal on the ground of limitation, because the Court Fee was affixed after few days.

The Case of the Appellant as argued by her Counsel on the basis of record is, that an Agreement dated 01.03.2019 [*at page-45*] was entered into between herself and Respondent, under which she gave an amount of Rs.25,00,000/- [Rupees Twenty Five Lacs] as loan to Respondent, which was never returned. Learned Counsel states that Appellant is a cancer patient and widow and, therefore, could not take prompt action against the Respondent, which fact is also supported by the medical record available in the present *LIS*. In the intervening period, she filed a Criminal Case against the Respondent by lodging FIR No.897 of 2021 [on 18.11.2021], which shows that she initiated the action to seek remedy within time. Counsel has referred to the FIR and ancillary record in the Criminal Case filed through his Statement.

Arguments heard and record perused.

For reference only, the record of pending Criminal Case has been perused, which for the time being is not proceeding vide Order dated 10.01.2026, passed under Section 249 of Criminal Procedure Code, because some of the prosecution witnesses have not appeared.

Coming back to the present Appeal.

The Agreement is of 01.03.2019; the Suit is filed on 24.11.2022 and according to the Impugned Order, the same is barred by three months in terms of Article 57 of LA, because the above prescribed time will run from the date of loan made; consequently, the Plaintiff was rejected at the initial stage. *Whereas*, the Appellate Court while maintaining the Impugned Order, dismissed the Appeal primarily on the ground that although the Appeal was presented within time [by 09.01.2023], but, stamps were affixed after few days, that is, on 17.01.2023. This delay of eight days was not condoned.

The Judgment of the Hon'ble Supreme Court handed down in the case of *Asad Ali and 9 others versus Bank of Punjab and others [P L D 2020 Supreme Court 736]*, as relied upon by the Appellate Court, is distinguishable, in the given circumstances. The background of the said Decision is that the petitioners, who filed Appeals in the High Court against their dismissal from service, in terms of Industrial Relations Ordinance, 2002 [as it then was]; the Judicial Branch [Office] of the High Court raised some objections, granted three days' time for removal and returned the appeals; but petitioners did not remove the Office Objections for six months and re-filed the appeals thereafter, which was not accepted by the Court and it was held that during Office Objection, if the limitation period expires, the petition would be barred by time. In the present case, the Appellate Court has overlooked the fact, that an Application under Section 149 of CPC for enlargement of time was filed, to affix the Court Fee, thus, the delay of few days, should have been condoned, looking at the element of hardship, *inter alia*, as the Appellant lady is a widow and in litigation for the past couple of years.

Both the Courts have not considered the fact that Appellant had taken the steps to remedy her grievance by initiating the criminal proceeding on the above date, which means that she was not indolent or sleeping on her rights but being a household lady heeded to the legal advice and initiated criminal proceeding, when full amount was not paid back to her by Respondent. Learned Courts have also overlooked the medical record, which was available in record.

Had the Appellant not resorted to any remedy within three years, then perhaps both the Impugned Decisions would have been endorsed in

this Second Appeal, but when the overall record of the *LIS* reflects or points out that *prima facie* there is a *bona fide* claim of a person, in the present Case the Appellant, based on the documentary evidence regarding which she or he has also taken remedial steps, then cause of action for filing a Suit, can be construed as one of a continuous nature [depending on the facts and circumstances of each case]. Even if there is a question of a time barred claim, in the present set of circumstances, that question of limitation is a mixed question of fact and law, for which trial is necessary and the Plaint should not have been rejected summarily and subsequently maintained in the Appellate Order.

In view of the above, both the Impugned Decisions are not sustainable. Delay of three months should have been condoned, looking at the overall circumstances of the case. Consequently, both the Impugned Decisions are set aside and Suit proceeding stands revived, and will be conducted in the following terms_

- i. Written Statement shall be filed within thirty days from the date of this Order, or the Respondent / Defendant will be debarred from filing the same.
- ii. Issue(s) should be settled thereafter.
- iii. If the Suit can be decided on the basis of legal Issues, the same will be framed and decided within two [02] months from today. However, if triable issues are required to be framed, then after framing the same the evidence will start immediately.
- iv. The evidence should be concluded within three [03] months without adjournment.
- v. If on the date of evidence, the Witness or Party is not available, then side will be closed and if the Opponent's Counsel is reluctant to cross-examine the witness, then the cross-examination shall be marked as "Nil".
- vi. Decision should be given within four [04] months from today.

In view of the above, this Appeal stands allowed and the pending Application(s), if any, also stand disposed of. No order as to costs.