

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

High Court Appeal No.114 of 2025

Appellant : Major (R) Sanwal Khan S/o Hafiz
Muhammad Umer, present in person.

Respondent : Rauf Textile & Printing Mills (Pvt.) Ltd.
Nemo.

For State:
Mr. Sandeep Malani, A.A.G., Sindh

Date of Hearing : 13.08.2026

Date of Judgment: 19.08.2026

J U D G M E N T

Amjad Ali Sahito, J.- The instant High Court Appeal has been preferred under Section 3 of the Law Reforms Ordinance, 1972, calling in question the Judgment dated 19.03.2025 and the consequential Decree dated 30.04.2025 passed by the learned Single Judge in Suit No.1080 of 2021. The appellant/plaintiff had instituted the said suit seeking recovery of arrears of salary, future salary, damages and other consequential reliefs. Upon conclusion of the proceedings, the learned Single Judge decreed the suit to the limited extent that the appellant was held entitled to compensation on account of non-payment of his wages for a period of three months, amounting to Rs.420,000/-, subject to deduction of applicable income tax, together with markup at the rate prescribed by the State Bank of Pakistan prevailing from the respective dates on which the amount became due until realization thereof. The remaining claims advanced by the appellant were dismissed.

2. Briefly stated, the appellant's case is that he was appointed by the respondent on 11.07.2019 as Chief Security Officer at a basic monthly salary of Rs.120,000/-, in addition to Rs.20,000/-

per month towards car, fuel and maintenance expenses. According to the appellant, during the subsistence of his employment, he was required not only to discharge his duties as Chief Security Officer but was also entrusted with additional responsibilities relating to criminal litigation and other legal proceedings of the respondent. He further asserted that he rendered services as Protocol Officer of the Honorary Consulate of the Kingdom of Lesotho, Pakistan and attended and pursued various criminal cases before different Courts. It was his case that such services fell outside the terms and scope of his original appointment and, consequently, he was entitled to separate remuneration or compensation in respect thereof.

3. The appellant further pleaded that his services were terminated by the respondent on or about 25.05.2020 without issuance of any formal letter of termination. He claimed that he came to know of the alleged termination through WhatsApp communication as well as a public notice published in a newspaper. According to him, such mode of termination was unlawful, ineffective and contrary to law, particularly in view of the restrictions and protections prevailing during the COVID-19 pandemic. He further asserted that his salary for the months of March, April and May 2020 remained unpaid.

4. The appellant also alleged that, during the relevant period, several criminal proceedings were initiated against him at the instance of the respondent's management and its officers. In this regard, he referred, inter alia, to FIR No.262/2020, FIR No.113/2020, FIR No.176/2021 and other proceedings, asserting that the same were false, malicious and instituted with the ulterior object of harassing, humiliating and damaging his reputation. He further alleged that he was arrested in one of the said cases and remained in custody for several days. According to him, during the same period, a public notice was also published announcing his disassociation from the respondent. He maintained that these acts caused him severe mental anguish, humiliation and deterioration of his physical and mental health.

5. On the aforesaid basis, the appellant claimed substantial damages, including a sum of Rs.1 billion on account of mental torture, agony, alleged malicious prosecution, illegal arrest, violation of his dignity and privacy, and other alleged wrongful acts attributable to the respondent. He further sought compensation of Rs.5 million for the additional services allegedly rendered by him and a statutory penalty of Rs.1 million under the Sindh COVID-19 Emergency Relief Act, 2020, together with interest thereon. He also sought attachment of the respondent's property and other consequential reliefs.

6. The proceedings before the learned Single Judge commenced upon issuance of notice to the respondent. Upon failure of the respondent to appear, service was effected through publication in the Daily Express on 02.09.2022, which was duly confirmed by the learned Additional Registrar (O.S.) on 13.09.2022, whereafter the respondent was proceeded against ex parte. The appellant submitted his ex parte proof affidavit and appeared in support of his case; however, despite opportunity, the respondent failed to cross-examine him. Consequently, a Commissioner was appointed for recording the evidence. Upon submission of the Commissioner's report, the matter was fixed for final arguments, whereupon the appellant appeared in person and addressed the Court. During the course of proceedings, when a question arose concerning the appellant's claim for compensation in respect of services allegedly rendered beyond the contractual terms of his employment, the learned Single Judge appointed an Amicus Curiae to assist the Court with particular reference to Section 70 of the Contract Act, 1872 and the principles governing restitution and unjust enrichment. After considering the pleadings, evidence and submissions, the learned Single Judge held the suit to be maintainable and within limitation. However, the claim for damages on account of wrongful termination was declined for want of evidence establishing the period of reasonable notice or the consequential financial loss. The claim for unpaid salary for March, April and May 2020, being unrebutted, was accepted and a sum of Rs.420,000/- was decreed along with markup. The claim for

compensation for additional services was declined for want of evidence establishing their reasonable monetary value, notwithstanding the finding that the respondent had derived benefit therefrom. Likewise, the claim for mental shock, agony and deterioration of health was rejected for want of sufficient medical evidence establishing the requisite causal nexus. Aggrieved of the said Judgment and Decree, the appellant has preferred the instant appeal.

7. The appellant, appearing in person before us, has advanced his submissions at considerable length and endeavoured to demonstrate that, notwithstanding several findings recorded in his favour by the learned Single Judge, the appropriate legal consequences were not drawn therefrom. He submits that his appointment as Chief Security Officer of the respondent is an admitted position and that the learned Single Judge himself found that he had performed services beyond the scope of his contractual employment. According to the appellant, once the Court had found that additional services were rendered and that the respondent had derived benefit therefrom, he became entitled, as a matter of law, to reasonable compensation under Section 70 of the Contract Act, 1872.

8. In support of his contention, the appellant has relied upon an authority letter allegedly issued by the Chief Executive Officer of the respondent, as well as various proceedings conducted before the criminal Courts, to contend that he was specifically authorized and required to pursue cases on behalf of the respondent and the Consulate. He submits that, in such capacity, he appeared before different Courts, pursued complaints, assisted in criminal proceedings and discharged legal and protocol-related functions which were wholly outside the ordinary scope of his appointment as Chief Security Officer. He further contends that the respondent derived substantial benefit from such services over a considerable period and that permitting the respondent to retain such benefit without payment would result in unjust enrichment.

9. The appellant has further contended that the learned Single Judge fell into error in declining compensation merely because he had not produced evidence of the fee that a third party might have charged for rendering comparable services. According to him, the Court itself possessed the jurisdiction to determine reasonable compensation having regard to the nature, duration and extent of the services actually rendered. He submits that, since the respondent elected not to contest the proceedings, his evidence concerning the additional responsibilities remained wholly unrebutted and ought, therefore, to have been accepted.

10. The appellant next contends that the learned Single Judge failed to appreciate the legal effect of the Sindh COVID-19 Emergency Relief Act, 2020. According to him, his services were discontinued during a period when termination of employees was prohibited by law. He submits that the learned Single Judge himself took note of Section 4 of the said enactment, under which contravention of Section 3 could entail a fine of up to Rs.1 million or attachment of property. It is, therefore, argued that once the Court found that his services had been terminated during the prohibited period, the statutory penalty of Rs.1 million ought to have been awarded in his favour. He has also claimed interest on the said amount from the date of termination until realization.

11. The appellant has also placed reliance upon various criminal cases allegedly initiated against him at the instance of the respondent and its officers. He submits that he was arrested and remained in custody from 23.05.2020 to 29.05.2020 and that, during the period of his detention, a public notice was published announcing his disassociation from the respondent. According to him, such publication was defamatory and intended to cause injury to his reputation. He has further alleged that persons connected with the respondent entered or attempted to enter his residence, which, according to him, constituted an infringement of his dignity and privacy protected under Article 14 of the Constitution. On these premises, he submits that substantial damages ought to have been awarded in his favour.

12. The appellant has also relied upon the medical record produced before the learned Single Judge. He submits that he remained under medical treatment and suffered serious health complications as a consequence of the events narrated by him. According to him, the medical documents placed on record sufficiently demonstrated that he had suffered physical and neurological ailments following the alleged conduct of the respondent. He contends that the learned Single Judge adopted an unduly technical approach in requiring examination of the doctors who had issued the medical documents, particularly when the proceedings were ex parte and the documents had remained unrebutted.

13. The appellant while arguing on application for condonation of delay being CMA No.1406/2025 contended that he was admitted in CMH Rawalpindi on 16.04.2025 to 13.05.2025 due to elevated blood sugar and blood pressure coupled with neuro cardio syncope & bleeding injuries on left hand finger and foot as well. He further stated that he applied for certified true copies on 23.07.2025 and after getting the same, he framed the plaint and filed it before this Court. Lastly, he prays that the application for condonation of time may be allowed and the impugned Judgment and Decree may be reviewed and grant relief on the merit.

14. No one is in attendance on behalf of the respondent, nor has any intimation of non-appearance been received. The record further reflects that no one has appeared on behalf of the respondent at any stage of the proceedings. The report submitted by the Bailiff indicates that he visited the given address of Mr. Pervez Arshad Chaudhry, Company Secretary of the respondent, where, after confirmation through a telephone call with Mr. Pervez Arshad Chaudhry, one of his servants, namely, Raheem Khan, received the notice. The Bailiff further reported that, despite knocking for a considerable period at the address of Dr. Shahzad Arshad, Chief Executive Officer of the respondent company, no one appeared, and consequently service could not be effected upon him.

15. Learned A.A.G. is present. However, in view of the order dated 26.11.2025, whereby it was observed that the matter pertains to a dispute between two private parties and that the appearance of the Office of the Advocate General was, therefore, not required, his presence is not necessary for adjudication of the instant appeal.

16. We have heard the appellant appearing in person and have carefully examined the material available on the record.

17. The appeal, as is evident from the record, was presented beyond the period prescribed by law. In order to overcome the consequent bar of limitation, the appellant preferred CMA No.1406/2025, seeking condonation of the delay. It is an admitted position that the instant appeal was instituted after expiry of the prescribed period of limitation. The appellant has principally sought condonation of the delay on the ground that, after pronouncement of the impugned judgment and decree, he was admitted in CMH Rawalpindi from 16.04.2025 to 13.05.2025 and that he applied for certified true copy of the said judgment on 23.07.2025 and subsequently after getting the same on 02.08.2025, he filed the instant Appeal on 03.09.2025.

18. However, for the purposes of Section 5 of the Limitation Act, 1908, a mere assertion that the delay was not deliberate, intentional or mala fide does not, in itself, constitute sufficient cause warranting condonation of the delay. The party seeking such indulgence is required to discharge the burden of furnishing a cogent, plausible, satisfactory and legally tenable explanation accounting for the entire period of delay and demonstrating sufficient cause for its failure to institute the appeal within the prescribed period of limitation. The discretion to condone delay is, therefore, to be exercised upon a judicial assessment of the explanation furnished and not merely on the basis of an unsubstantiated plea of bona fide belief.

19. In the present case, the explanation furnished by the appellant does not satisfactorily account for the delay in filing the instant appeal. Although the appellant has asserted that he remained admitted in hospital from 16.04.2025 to 13.05.2025

and has sought to explain the subsequent delay by claiming that he was granted four weeks' sick leave followed by two further periods of leave, the documents placed on record do not substantiate such assertion. In particular, there is no cogent or reliable documentary evidence demonstrating that the appellant was in fact granted sick leave for the said period of four weeks or that the subsequent two periods of leave were duly sanctioned. Mere assertion of continued illness or entitlement to leave, unsupported by the relevant medical or official record, cannot constitute sufficient cause within the meaning of Section 5 of the Limitation Act, 1908. The appellant was required to place before the Court material establishing the circumstances which prevented him from filing the appeal within the prescribed period. The hospitalization from 16.04.2025 to 13.05.2025, even if accepted, does not by itself explain the entire period of delay, particularly when the alleged subsequent leave has not been established from the record.

20. Consequently, the appellant has failed to establish any sufficient cause for condonation of the delay in filing the instant appeal. CMA No.1406/2025, being the application under Section 5 of the Limitation Act, 1908, is accordingly found to be devoid of merit and is hereby dismissed. As a necessary consequence, the appeal, being barred by limitation, is liable to be dismissed on this ground alone. Nevertheless, as the merits of the matter have also been addressed, the same are considered hereunder.

21. The following questions arise for determination in the instant appeal:

- (i) whether the termination of the appellant's employment was lawful and in accordance with the terms and conditions governing his appointment;
- (ii) whether, as a consequence of such termination and the acts allegedly committed by the respondent, the appellant is entitled to compensation for mental shock, agony, distress and torture; and
- (iii) whether the appellant is entitled to remuneration or compensation for the additional services allegedly rendered by him beyond the scope of his contractual appointment.

22. As regards the termination of employment, the appointment letter admittedly did not stipulate any specific period of notice required for termination. The learned Single Judge, therefore, proceeded on the basis that the appellant was entitled to reasonable notice. However, the appellant failed to place on record sufficient evidence to establish what period would, in the circumstances, constitute reasonable notice or what actual financial loss he suffered by reason of the alleged failure to provide such notice.

23. The appellant's contention that no formal termination letter was issued cannot, by itself, lead to the conclusion that his employment continued indefinitely or that he became entitled to salary for an unlimited period. The learned Single Judge considered the WhatsApp communication as well as the newspaper publication and concluded that the appellant had, in fact, been informed of the termination of his services. The sufficiency or otherwise of such notice is a distinct question. Since the appellant failed to establish either the period constituting reasonable notice or the financial loss occasioned by its alleged absence, no further monetary relief could validly be granted on this score.

24. The position, however, is materially different with regard to the claim for unpaid salary. The salary for the months of March, April and May 2020 remained unrebutted and was, accordingly, decreed in the sum of Rs.420,000/-, subject to deduction of applicable income tax, together with markup at the rate prescribed by the State Bank of Pakistan from the respective dates on which the amounts became due until realization.

25. The appellant has also invoked the Sindh COVID-19 Emergency Relief Act, 2020, contending that his termination during the relevant period was prohibited by law. The statutory scheme undoubtedly contemplated protection of employees against lay-off, termination or removal during the prescribed period and also provided for penal consequences in the event of a proved contravention. However, the mere circumstance that the termination occurred during the COVID-19 period did not, in

itself, confer upon the appellant an automatic entitlement to a monetary award of Rs.1 million. It remained incumbent upon him to establish that the respondent's conduct constituted a contravention falling within the ambit of the relevant statutory provision and that the conditions prescribed for imposition of the penalty stood satisfied.

26. The learned Single Judge duly considered the appellant's reliance upon the COVID-19 legislation but found no sufficient basis for awarding the claimed statutory penalty. We find no legal or factual infirmity in such conclusion. A statutory penalty cannot be transformed into an automatic monetary decree in favour of a private claimant merely because the statute prescribes a maximum amount of fine. In the absence of proof of the requisite statutory contravention and the legal foundation for imposition of the penalty, the claim for Rs.1 million and consequential interest was rightly declined.

27. With regard to the claim for mental agony, distress, torture and deterioration of health, the appellant seeks substantial compensation on the assertion that the respondent's conduct caused him severe mental suffering and adversely affected his health. In support thereof, reliance has been placed upon the criminal proceedings allegedly initiated against him, the alleged acts of harassment and the medical documents produced before the Court.

28. The mere initiation of criminal proceedings against the appellant, or the fact that he may subsequently have obtained relief therein, does not, without more, establish actionable liability on the part of the respondent for the mental suffering alleged to have been caused thereby. The appellant was required to establish, through cogent and legally admissible evidence, not only that the respondent was responsible for the wrongful acts complained of but also that such acts directly and proximately caused the injury for which compensation was sought. The requisite causal nexus has not been established by sufficient evidence.

29. The medical documents relied upon by the appellant were also considered by the learned Single Judge. However, the medical practitioners who issued the said documents were not examined, nor was sufficient medical evidence produced to establish that the appellant's alleged mental or physical condition was attributable to any act or omission on the part of the respondent. Mere treatment or hospitalization, without proof of causation, cannot by itself establish legal liability. Moreover, although the appellant claimed an extraordinary sum of Rs.1 billion by way of damages, he failed to produce sufficient evidence regarding the precise nature and extent of the alleged injury, its causal relationship with the respondent's conduct, or any rational and evidentiary basis upon which the quantum of such damages could be assessed. Generalized assertions of mental agony, humiliation and distress, therefore, cannot furnish a lawful basis for an award of damages of such magnitude.

30. We are, therefore, of the considered view that the learned Single Judge was justified in declining the claim for compensation on account of mental agony, distress and alleged deterioration of health, the appellant having failed to establish the necessary factual, evidentiary and medical foundation for such relief.

31. Turning to the third question, the learned Single Judge examined the appellant's claim for compensation in respect of additional services with reference to Section 70 of the Contract Act, 1872. The Court found that the appellant had, in fact, performed certain services beyond the duties contemplated by his contractual appointment as Chief Security Officer and that the respondent had derived benefit from such services.

32. The appellant has relied upon the authority letter allegedly issued by the Chief Executive Officer of the respondent and upon various criminal proceedings to contend that he had been required to appear before Courts, pursue complaints and assist in criminal proceedings on behalf of the respondent and the Consulate. These circumstances may, at the highest, establish

that additional services were rendered; they do not, however, by themselves establish the monetary value thereof.

33. The appellant claimed a sum of Rs.5 million in respect of such additional services but produced no prevailing fee schedule, expert opinion, documentary assessment, comparable market evidence or other reliable material from which the reasonable value of the benefit allegedly conferred upon the respondent could be determined. While Section 70 of the Contract Act may, where its statutory requirements are satisfied, furnish a basis for compensation in respect of a non-gratuitous act from which another person has derived benefit, the provision does not dispense with proof of the reasonable value of the benefit received. Likewise, the principle of unjust enrichment cannot, in the absence of proof of the value of the benefit retained, justify an arbitrary or unsubstantiated monetary award. The learned Single Judge, therefore, rightly declined to award the amount claimed by the appellant in the absence of reliable evidence regarding its quantum.

34. The appellant has further contended that, since the respondent remained *ex parte*, his evidence ought to have been accepted in its entirety. Such proposition, stated in absolute terms, cannot be countenanced. Even in *ex parte* proceedings, the plaintiff is not relieved of the burden of establishing the essential ingredients of his cause of action and his legal entitlement to the relief claimed. The record demonstrates that the appellant was afforded adequate opportunity to substantiate his case; his affidavit and documentary material were taken into consideration, his evidence was recorded through a Commissioner, and an *Amicus Curiae* was appointed to assist the Court specifically on the question of compensation for the additional services. The learned Single Judge granted relief to the extent the claims were established by evidence and declined the remaining claims where the requisite evidentiary foundation was lacking.

35. Upon a careful and holistic examination of the impugned Judgment, we find that the learned Single Judge duly considered

all material questions arising from the pleadings, evidence and submissions of the appellant. The appellant has failed to identify any material piece of evidence which was either ignored or excluded from consideration, or any finding which can legitimately be characterized as perverse, arbitrary, capricious, or the result of misreading or non-reading of the evidence. No jurisdictional error or material irregularity has been demonstrated so as to warrant interference in appellate jurisdiction.

36. The appellant has also referred to his status as a senior citizen and former member of the Defence Forces. Such circumstances undoubtedly command due regard and respect; nevertheless, they cannot substitute for proof of a monetary claim or dispense with the legal requirement of establishing entitlement to damages and compensation. The appellant has failed to substantiate his claims for Rs.1 billion as damages, Rs.1 million as statutory penalty, Rs.5 million for additional services, or any other consequential relief beyond the amount already decreed. The decree for Rs.420,000/- towards unpaid salary, subject to applicable income tax and together with markup in accordance with the State Bank of Pakistan rate, has not been shown to suffer from any legal, factual or evidentiary infirmity.

37. For the foregoing reasons, the appeal, having been found to be barred by limitation as well as devoid of merit, is hereby dismissed. The Judgment dated 19.03.2025 and Decree dated 30.04.2025 passed by the learned Single Judge are found to be in accordance with law and do not call for any interference by this Court in its appellate jurisdiction. Consequently, the instant appeal is **dismissed**, and the impugned Judgment and Decree are **maintained**.

JUDGE

JUDGE