

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
 Suit No.311 of 2009

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For hearing of CMA No.9672/11 (U/O VII rule 11 CPC)
2. For examination of Parties/Settlement of Issues.

05.12.2017

Mr. Amir Maqsood, Advocate for Plaintiff.

Mr. Rafiq Ahmed Kalwar, Advocate for Defendant.

1. This is an Application under Order VII Rule 11 CPC filed on behalf of the Defendant seeking rejection of the Plaint on the ground that instant Suit is time barred. Learned Counsel for the Defendant submits that the accident in question occurred on 23.06.2007 and in terms of Article 22 of the Limitation Act, instant Suit should have been filed within one year's time which expired on 22.06.2008, whereas, admittedly instant Suit has been filed on 04.08.2008, and therefore the same is hopelessly time barred. Learned Counsel further submits that even Section 4 of the Limitation Act, 1908 would not apply in this matter, and therefore listed application be allowed. In support he has relied upon the cases reported as **1999 SCMR 108 (Lehar Khan and others v. Amir Hamza and others)**, **1995 MLD 1042 (Khushi Muhammad another v. Muhammad Sharif and 6 others)**, **2006 CLC 618 (Muhammad Shareef v. Muhammad Ramzan and 3 others)** and **2006 MLD 1657 (Mst. Perveen Akhtar v. Consulate General of USA at Karachi and others)**.

On the other hand learned Counsel for the Plaintiff submits that the Suit is within time as it was filed on the first opening day after summer vacations i.e. 04.08.2008, whereas, when the limitation was expiring the Court was closed for summer vacations, and therefore Suit is within time. In support he has relied upon the cases reported as

1991 MLD 415 (Mst. Qaiser Jehan v. Karachi Transport Corporation and another), and PLD 2014 SC 783 (Province of Punjab through Collector and others v. Muhammad Saleem and others).

I have heard both the learned Counsel and perused the record. There is no dispute in this matter to the effect that the limitation of one year as contemplated under Article 22 of the Limitation Act, 1908, was expiring on 22.06.2008, whereas, the Suit has been filed on 04.08.2008. The Plaintiff's case is premised on the fact that the Court was closed for summer vacations, and therefore Suit could have been filed on the first opening day and the period in between 22.06.2008 till the first opening day will not be counted in the limitation period. On the other hand the Defendants case is that office is always open during summer vacations and therefore Suit ought to have been filed within the limitation period and not on the opening day.

However, I am not inclined to agree with the stance of the Defendant in this case for the reason that the controversy as raised in this matter has been considered and decided umpteen times as recent as by a Division Bench of this Court in a case reported as ***Habib Bank Limited through President v. Haider Ladhu Jaffer through Attorney and others (2016 CLC 592)*** incidentally authorized by me, wherein, the controversy was identical on facts. The limitation in that case was expiring on 20.07.1994, during summer vacations and the Suit was filed on 06.08.1995 i.e. the first opening day and the Division Bench came to the conclusion that the Suit was competently filed and was within limitation. The relevant observations are contained in Para No.8 & 9 of the said Judgment, which reads as under:-

"8. The learned Single Judge while passing the impugned order has observed that since the Court was not assisted on behalf of respondent No.1 when Judgment dated 31.8.2010 was passed as this Notification

was not brought to the notice of the Court and therefore, the Court had dismissed the Suit being time barred, though the same was filed on the first opening day of the Court and was entitled for the benefit of Section 4 of the Limitation Act. We are respectfully in agreement with the observation of the learned Single Judge in this regard as there is no cavil to this proposition that if the period of limitation is expiring on a day when the Court is closed the Suit may be instituted, preferred or made on the day when the Court reopens. Section 4 of the Limitation Act reads as under:-

"4. Where Court is closed when period expires. Where the period of limitation prescribed for any suit, appeal or application, expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court reopens."

9. Counsel for the appellant has laid much stress on the judgment in the case of Muhammad Shareef supra passed by a learned Single Judge of the Lahore High Court, which besides being persuasive in nature, with respect, has also incorrectly placed reliance on the Judgment of the Hon'ble Supreme Court in the case of Fateh Ali Khan supra as the procedure for filing Civil Petition for Leave to Appeal before the Hon'ble Supreme Court is governed by the Supreme Court Rules itself, whereas, the Supreme Court Registry is never closed for receiving petitions and appeals during vacations and on the contrary the procedure for filing of appeals is regulated by the Sindh Chief Court Rules (Original Side) and the Notifications issued there under. The practice as is prevailing before this Court is that if the period of limitation for filing any case is expiring during vacations then the office receives such cases on the first opening day without raising any objection as to limitation and the benefit of Section 4 being statutory in nature is granted to all such cases. The contention so raised on behalf of the appellant appears to be misconceived in this regard and is hereby repelled. Similar are the facts in the case of Juma supra wherein a Civil Petition for Leave to Appeal was filed before the Hon'ble Supreme Court after expiry of limitation period and the delay which had occurred was sought to be explained on behalf of the petitioner on the ground that as the Hon'ble Supreme Court was closed for long vacations, the petition was filed on the first opening day of the Court and was within time. We are of the view that both these judgments heavily relied upon by the Counsel for the appellant are not relevant as the facts of instant case are materially different, hence of no help to the case of the appellant.

Moreover, in the case reported as ***Fazal Karim and another v.***

Ghulam Jilani and others (1975 SCMR 452), the Honourable Supreme

Court has put this controversy at naught in the following manner:-

9. Having careful considered the contentions raised by the Counsel for the parties; we are convinced that the view taken by the learned Judge of the High Court was unexceptionable. From the plain reading of Section 4

of the Limitation Act, it becomes abundantly clear that the period during which the Court remains closed on account of vacations has to be excluded for the computation of limitation and the notification cannot be taken precedence over the statutory provision. Even otherwise, we find that there is no conflict between the notification and the provision contained in section 4 of the Limitation Act. According to the notification, the Office was to remain open for receipt of petitions from persons who might choose to file. Surely, the word "Office" as used in the notification is not anonymous with "Court" as used in Section 4 of the Limitation Act. The Court may be closed and yet the Office might still be open. Even otherwise, the notification merely gives the petitioners an option to file petitions. Such an option cannot be construed so as to take away a statutory right. Even otherwise, it is doubtful that the word "Petition" as used in the notification will cover a memorandum of appeal. I am therefore, clearly of the view that the appeal even though filed during the vacations could be filed on the reopening of the Court and was, therefore, well within time. The authorities relied upon by the appellants are in point and the position is well settled. The only authority pressed into service on behalf of the appellants Nuchtyappa Mudali and others v. Ayyasami Ayyar referred to earlier proceeds on distinguishable facts. In that case the relevant Notification was in the following terms:-

"The Courts will be open between the hours of 4 and 5 p.m. on Tuesdays and Fridays during the recess for the reception of plaints, petitions and other miscellaneous papers."

The difference in the terminology employed in the two Notifications is very material. The Notification pressed into service on behalf of the appellants uses the word "Office" which as stated earlier is not the same thing as "Court".

In view of hereinabove, facts and circumstances and the law laid down by the Division Bench of this Court and by the Hon'ble Supreme Court, I am of the view that the Suit filed on the first opening day i.e. 04.08.2008 was competently filed and the benefit of Section 4 of the Limitation Act is to be granted and the Suit cannot be termed as time barred. Accordingly listed application being misconceived is hereby dismissed.

2. Parties are directed to file proposed issues on the next date.

J U D G E