

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**

**1<sup>st</sup> Appeal No. 85 of 2017**

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

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**Hearing/Priority.**

1. For hearing of CMA No. 7171/2013 (Limitation)
2. For hearing of main case.
3. For hearing of CMA No. 876/2014

**29.02.2020**

Mr. Farooq Akhtar, advocate for the appellant.  
Mr. Ali Raza, advocate for the respondent.

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**YOUSUF ALI SAYEED, J.** The Appellant has brought this First Appeal under Section 96 CPC (initially numbered as 1<sup>st</sup> Appeal No. 39/2013) against the Judgment of the learned District Judge Karachi East in Suit No. 557 of 2013, which had been filed by the Respondent, with it thereby being determined that the late husband of the aforementioned contestants (i.e. Iqbal Ahmed Khan) had pronounced divorce on the Appellant/Defendant during his lifetime, hence she was rightly excluded from inheritance in relation to the dues payable on his account by the Karachi Port Trust as an incidence of his employment.

2. Despite the Judgment being announced on 05.09.2013 and the certified copy being obtained by the Appellant on 01.10.2013, the Appeal was presented on 29.11.2013, with apparent delay of 29 days, and under the circumstances was accompanied by an Application under Section 5 of the Limitation Act, 1908, bearing CMA No. 7171/13, seeking that the delay be condoned, such Application being resisted by the Respondent, who filed her Counter-Affidavit asserting that the Appeal was barred by limitation and ought to be dismissed.

3. Turning firstly to the subject of limitation, it merits consideration at the outset that the sole ground raised vide CMA No. 7171/13 and the supporting Affidavit are that the delay in filing of the Appeal may be condoned as the Appellant, being a poor widow, was not in condition to manage the court expenses and fee of counsel, hence the delay was not deliberate or intentional, being beyond her control.
4. In support of the plea for condonation learned counsel for the Appellant merely agitated the same point, citing financial hardship, and when called upon to cite any case law where such ground had of itself found favour with the Court, he placed reliance on the judgments of the Hon'ble Supreme Court in the case reported as *Zia ul Rehman v. The State* 2001 SCMR 1405, *Pir Nazir Ahmed Shah v. Government of Pakistan through Secretary, States and Frontier Regions Division, Islamabad and 2 others*' 2002 PLC (C.S) 953, and *Tanveer Hussain v. Raviryan Limited through Managing Director and others* 2007 SCMR 737.
5. Conversely learned counsel appearing on behalf of the Respondent/Plaintiff submitted that the Appellant had failed to properly explain the delay filing of the Appeal. He argued that the ground advanced in terms of CMA No. 7171/13 was contrived, self-serving and misconceived, in as much as the Appeal could even have been presented in person without court fee and a request being made to allow for the deficiency to subsequently be made up. He placed reliance on the judgment of a learned Divisional Bench of the Lahore High Court in the case of *Muhammad Ishaq versus Muhammad Shabbir* PLD 1990 Lahore 174, where it had been observed that "Old age and poverty per se have never been recognized as good grounds for condonation of delay", and submitted that the Appeal was clearly time barred and was therefore liable to be dismissed.

6. Having considered CMA No. 7171/13 and the arguments advanced in that regard, it transpires that the judgments cited on behalf of the Appellant are all clearly distinguishable, pertaining to either a criminal case or matters of employment before or emanating from the Labour Courts or Service Tribunal, and do not relate to the controversy at hand. As pointed out, even if the Appellant was facing genuine financial hardship at the time, the Appeal could still have been presented in person within the prescribed period of limitation, *sans* the court fee, supported by an Application to grant time for the deficiency to subsequently be made up on that ground, which plea would then have been determined at the appropriate stage on its own merits. Indeed, entertaining the bare plea of personal hardship, as advanced by the Appellant, would be tantamount to negating the very principle of limitation, which would in turn serve to open the floodgates and undermine the overall administration of justice. Needless to say, such an outcome can scarcely be approved. For an authoritative pronouncement as to the salient features of the law on the subject, one may turn to the judgment of the Honourable Supreme Court in the case reported as *Khushi Muhammad through L.Rs, and others v Mst. Fazal Bibi and others* PLD 2016 SC 872, where the following principles were distilled from an examination of various relevant judgments of the superior Courts:

- “(i) The law of limitation is a statute of repose, designed to quieten title and to bar stale and water-logged disputes and is to be strictly complied with. Statutes of limitation by their very nature are strict and inflexible. The Act does not confer a right; it only regulates the rights of the parties. Such a regulatory enactment cannot be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies are fully complied with in letter and spirit. There is no scope in limitation law for any equitable or ethical construction to get over them. Justice, equity and good conscience do not override the law of limitation. Their object is to prevent stale demands and so they ought to be construed strictly;

- (ii) The hurdles of limitation cannot be crossed under the guise of any hardships or imagined inherent discretionary jurisdiction of the court. Ignorance, negligence, mistake or hardship does not save limitation, nor does poverty of the parties;
- (iii) It is salutary to construe exceptions or exemptions to a provision in a statute of limitation rather liberally while a strict construction is enjoined as regards the main provision. For when such a provision is set up as a defence to an action, it has to be clearly seen if the case comes strictly within the ambit of the provision;
- (iv) There is absolutely no room for the exercise of any imagined judicial discretion vis-à-vis interpretation of a provision, whatever hardship may result from following strictly the statutory provision. There is no scope for any equity. The court cannot claim any special inherent equity jurisdiction;
- (v) A statute of limitation instead of being viewed in an unfavourable light, as an unjust and discreditable defence, should have received such support from courts of justice as would have made it what it was intended emphatically to be, a statute of repose. It can be rightly stated that the plea of limitation cannot be deemed as an unjust or discreditable defence. There is nothing morally wrong and there is no disparagement to the party pleading it. It is not a mere technical plea as it is based on sound public policy and no one should be deprived of the right he has gained by the law. It is indeed often a righteous defence. The court has to only see if the defence is good in law and not if it is moral or conscientious;
- (vi) The intention of the Law of Limitation is not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right.
- (vii) The Law of Limitation is an artificial mode conceived to terminate justiciable disputes. It has therefore to be construed strictly with a leaning to benefit the suitor;
- (viii) Construing the Preamble and Section 5 of the Act it will be seen that the fundamental principle is to induce the claimants to be prompt in claiming rights. Unexplained delay or laches on the part of those who are expected to be aware and conscious of the legal position and who have facilities for proper legal assistance can hardly be encouraged or countenanced.”

[Underlining added]

7. That being so, CMA No. 7171/13 is found to be devoid of merit and is hereby dismissed, with the result that the Appeal is also dismissed as being barred by limitation.

**JUDGE**

**JUDGE**

*TariqAli/PA*