

**IN THE HIGH COURT OF SINDH, AT
KARACHI**

Present:

Muhammad Ali Mazhar and
Yousuf Ali Sayeed, JJ

**1st Appeals Nos. 36,
89, 90, 91 and 92 of 2016**

Appellant : M/s House Building Finance Company Limited, through Khurshid Ahmed Qureshi, Advocate, in all Appeals.

Respondents : Asif Khan and Saleem Khan, Respondents in 1st Appeal No. 92 of 2016, through Nadir Khan Burdi, Advocate. None present in 1st Appeals Nos. 36, 89, 90 and 91 of 2016.

Date of hearing : 13.08.2020

JUDGEMENT

YOUSUF ALI SAYEED, J - The captioned Appeals arise from Suits that were instituted by the Appellant under the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the “**Ordinance**”) against various Respondents, and were decreed in its favour by the learned Judge of the Banking Court No. IV at Karachi, with the grievance espoused by the Appellant being that the Banking Court neglected to award certain elements of its claim.

2. As it transpires, all the Appeals came to be presented beyond the statutory period of limitation prescribed under Section 22 of the Ordinance, and for purpose of reference the factual position can be summarized as follows:

Appeal No.	Date of Filing	Suit No.	Date of Decree	Copy Applied On	Copy Made Ready On
36 of 2016	15.02.16	33 of 2015	06.01.16	06.01.16	11.01.16
89 of 2016	27.05.16	24 of 2015	12.12.15	06.01.16	11.01.16
90 of 2016	27.05.16	25 of 2015	18.12.15	06.01.16	11.01.16
91 of 2016	27.05.16	32 of 2015	18.12.15	06.01.16	11.01.16
92 of 2016	27.05.16	34 of 2015	18.12.15	06.01.16	11.01.16

3. In an endeavor to address the bar of limitation arising under the circumstances, the Appellant filed Miscellaneous Applications bearing CMA Nos. 2683/16, 2686/16, 2689/16 and 2692/16 (collectively the “**Condonation Applications**”) in 1st Appeals Nos. 89, 90, 91 and 92 of 2016 under Section 5 of the Limitation Act, 1908 (“**S.5**”), seeking condonation of the delay in each of those Appeals in like terms, as follows:

“For the facts and reasons disclosed in the accompanying affidavit, it is most respectfully prayed on behalf of the appellant that this Hon’ble Court may be pleased to grant this application and may kindly be condone the delay in filing the 1st appeal Under Section 22 of the (financial Institutions Recovery of Finances) Ord. 2001 as the same could not be filed within time due to an application U/S 152 CPC R/W Section 151 CPC was filed as per verbal direction of the Judge Banking Court No. IV Karachi, for modification of the decree to the extent of claim of arrears of rental share and other admissible charges as well as cost of fund from the date of default U/S 3 of the FIO, 2001 and was pending before the Hon’ble Banking Court but later on, after hearing the aforesaid application was dismissed on 12.04.2016.”

4. Whilst such an application was not filed in 1st Appeal No. 36 of 2016, it being asserted that the same was within time, such a premise is belied by the fact that it transpires that its date of presentation is also clearly beyond the period of 30 days prescribed under S.22 of the Ordinance, reckoned from the relevant copying date.

5. Proceeding with the matter, learned counsel for the Appellants essentially reiterated the content of the Condonation Applications, and submitted that for the reason stated therein the delay in filing those Appeals ought to be condoned. With reference to the judgments in the cases reported as Lachman Das v. Servanand and 66 others 1995 SCMR 435 and Miran alias Mir Muhammad v. Ghulam Hussain PLD 1985 Karachi 674, he argued that limitation merely regulates the inherent rights of parties and if a remedy was not otherwise barred, limitation would not apply as relief could not be withheld on a mere technical ground. Furthermore, he sought to contend that 1st Appeal No. 36 of 2016 was within time, but could not show how this was the case.

6. Conversely, learned counsel appearing on behalf of the Respondents in 1st Appeal No. 92 of 2016, confining his submissions to that matter, submitted that said Appeal was barred by limitation and that the plea raised did not constitute proper grounds for condonation, and argued that as the Ordinance was a special law, with S.22 thereof itself prescribing a specific period for the filing of an appeal, S.5 was therefore inapplicable under the circumstances.

7. Having considered the Condonation Applications, we are firstly of the view that plea advanced with reference to the step taken by the Appellant for seeking modification of the decrees in the underlying suits vide the Applications under S.152 CPC does not constitute 'sufficient cause' within the contemplation of S.5 and the contention of the Appellant in that regard is clearly fallacious, especially as such Applications were patently misconceived in view of S.27 of the Ordinance, which states as follows:

“27. Finality of order.-

Subject to the provisions of section 22, no court or other authority shall revise or review or call, or permit to be called, into question any proceeding, judgment, decree, sentence or order of a Banking Court or the legality or propriety of anything done or intended to be done by the Banking Court in exercise of jurisdiction under this Ordinance:

Provided that the Banking Court may, on its own accord or on application of any party, and with notice to the other party or, as the case may be, to both the parties, correct any clerical or typographical mistake in any judgment, decree, sentence or order passed by it.”

8. Furthermore, as the Applications seeking modification were admittedly dismissed on 12.04.2016, as such, even if for the sake of argument that date is deemed to be of consequence, the relevant Appeals (i.e. Nos. 89, 90, 91 and 92 of 2016), were nonetheless presented on 27.05.16, well after the lapse of a further 30 days from that date, reflecting the Appellants continued indolence. Even otherwise, as pointed out, S.5 is wholly inapplicable in the context of the matters at hand, with the judgment of a learned Division Bench of this Court in the matter reported as Tarique Aziz Shaikh v/s Habib Bank Limited through Attorney and another 2017 CLD 406 serving as a case in point, it having been held with reference to the provisions of the Limitation Act in the context of the Ordinance as follows:

“10. In view of the above we are of the considered opinion that the provisions of Section 5 of the Act, are not applicable to the appeal filed under section 22 of the Ordinance as the Ordinance, which is a special law, itself provides period of limitation for filing the appeal to the High Court against the judgment, decree, sentence or final order, passed by the Banking Court. Reference can be made to case of Messrs S. Malik Traders and another v. Saudi Pak Leasing Company Ltd. (2009 CLD 171), wherein the Hon'ble Division Bench of this Court dismissed the appeal under section 22 of the Ordinance with the following observations:-

'2 Today, we have heard the learned counsel for the appellant and with his assistance gone through the certified copy of the judgment and decree placed on record by the appellant. It shows that if the period of limitation is computed from the date of signing of decree and the period consumed in obtaining certified true copy of the judgment and the decree i.e. two days is also excluded still the appeal is time-barred by one day. This being the position and considering the fact that section 5 of the Limitation Act is also not applicable to this appeal, having been preferred under a special statute, it is dismissed being time-barred."

9. As for the case law cited by learned counsel for the Appellants, suffice it to say that the case of Lachman Das (Supra) is entirely distinguishable in as much as the same did not even relate to the subject of limitation. Furthermore, the Appellant's reliance on the judgment in the case of Miran (Supra) is entirely misplaced as the same does not support the plea for condonation. On the contrary, it is well settled that limitation is not a mere technicality and 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 relevant¹ 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.”

10. Under the circumstances, it is apparent that the Condonation Applications are not only bereft of substance but are also not maintainable, hence are hereby dismissed with the result that 1st Appeals Nos. 89, 90, 91 and 92 of 2016 also stand dismissed as being barred by limitation, along with all pending Miscellaneous Applications. 1st Appeal No. 36 of 2016, having similarly been filed beyond the period of 30 days prescribed under S.22 of the Ordinance, is also dismissed accordingly.

JUDGE

JUDGE

Karachi
Dated _____