

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

CP D 73 of 2019 : Anwar Ali vs.
Tariq Mehmood Khoso & Others

For the Petitioner : Mr. Kamran Iqbal Bhutta, Advocate

For the Respondents : Mr. Ishrat Zahid Alavi
Assistant Attorney General

Mr. Manzoorul Haq
Law Officer, State Bank of Pakistan

Date of Hearing : 20.11.2019

Date of Announcement : 20.11.2019

JUDGMENT

Agha Faisal, J: The present petition has been filed to assail the order dated 07.11.2018 (“Impugned Order”) rendered by the Foreign Exchange Regulatory Appellate Board at Karachi pursuant to the Foreign Exchange Regulations Act, 1947 (FER Act). It is considered expedient to reproduce the Impugned Order herein below:

“u/s 23(C) of FER Act, 1947

Order

By this order I intend to dispose of the application u/s 5 of Limitation Act.

Heard the learned counsel for the appellant on point of limitation. In support of his contention he has relied upon the case law reported in 2001 CLC 221 Karachi, 2001 SCMR 827 and 2007 SCMR 866 and prayed for condonation of delay in filing of appeal.

The perusal of the impugned judgment reveals that it was passed on 30.05.2018. The appeal was to be filed within 30 days but instant appeal has been filed on 10.10.2018 with a delay of 4 months and 10 days. It is well settled law that appellant has to explain delay of each and every day. No such explanation has either been given in the application under section 5 of the Limitation Act or supporting affidavit of appellant Anwar Ali.

The appeal has been filed after 4 months and 10 days delay which is grossly time barred. The facts and circumstances of the case laws relied upon by the learned counsel for appellant in my humble opinion are distinguishable from the facts and circumstances of the present case, hence, are inapplicable. Hence the application u/s 5 of limitation Act is hereby dismissed and as consequence whereof the instant appeal stands also dismissed in limine being grossly time barred.”

2. Briefly stated, complaints were filed by the Foreign Exchange Operations Department, State Bank of Pakistan against the petitioner, and others, for contravention of the provisions of the FER Act before the Foreign Exchange Adjudication Court. The said complaints culminated in a judgment dated 30.05.2018 (“Judgment”) rendered in favour of the complainant. An appeal was preferred against the Judgment which was accompanied by an application wherein condonation of delay in filing the said appeal for 106 days was specifically sought. The condonation application and the appeal were dismissed vide the Impugned Judgment, hence, this petition.

3. Mr. Kamran Iqbal Bhutta, Advocate appeared on behalf of the petitioner and submitted that dismissal of the condonation application was unmerited as no delay was occasioned in institution of the appeal. It was further argued that rendering of the Impugned Order amounted to reliance on hyper technicalities as no heed was paid to the genuine grievances of the appellants. It was thus argued that this Court, in exercise of its Constitutional jurisdiction, may be pleased to set aside the Impugned Order and direct that the appeal be heard on its merit.

4. Mr. Ishrat Zahid Alavi, Assistant Attorney General and Mr. Manzoorul Haq, Law Officer, State Bank of Pakistan controverted the arguments advanced on behalf of the petitioner and submitted that the appeal in question was admittedly time barred and that the plea taken by the petitioner in the present petition was a novel afterthought to obtain unmerited relief from this Court, hence, the present petition ought to be dismissed forthwith.

5. We have heard the respective learned counsel and the Law Officer of the State Bank of Pakistan and have considered the record to

which our surveillance was solicited. It is denoted at the very outset that this Court is not sitting in appeal with respect to the Impugned Order and that our jurisdiction is limited to the determination of whether there is any manifest infirmity in the Impugned Order, meriting interference in the Constitutional jurisdiction of this Court. It may be appropriate to initiate this deliberation by adverting to the relevant provision of the FER Act, dealing with appeals, and the same is reproduced herein below:

"23C. Appeal to Appellate Board. (1) The Federal Government may, by notification in official Gazette, constitute as many appellate boards, each to be called the Foreign Exchange Regulation Appellate Board, as it may consider necessary, and where it establishes more than one Appellate Board, shall specify in the notification the territorial limits within which each one of them shall exercise jurisdiction.

(2) An Appellate Board shall consist of a person who is, or has been or is qualified for appointment as a Judge of a High Court or a District Judge or an Additional District Judge.

(3) Any person aggrieved by any order of the Adjudicating Officer made under sub-section (4) or sub-section (5) or sub-section (6) of section 23B may, within thirty days of such order, prefer an appeal to the Appellate Board within whose jurisdiction the order is passed:

Provided that no appeal shall lie from an interlocutory order which does not dispose of the entire case before the Adjudicating Officer: Provided further that the Appellate Board may entertain an appeal after the expiry of the said period of thirty days but not later than sixty days from the date of the aforesaid order if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Explanation.—For the purposes of this sub-section, the expression "any person aggrieved" shall include the Federal Government and the State Bank.

(4) No appeal shall be admitted for hearing unless the appellant deposits in cash with the Appellate Board the amount of penalty or, at the discretion of the Appellate Board, furnishes security equal in value to such amount of penalty.

(5) The Appellate Board may make such inquiry as it may consider necessary, and after giving the appellant an opportunity of being heard if he so desires, pass such order as it thinks fit, confirming, altering or annulling the order appealed against: Provided that no order enhancing any penalty shall be passed unless the person affected thereby has been given an opportunity of showing cause against it and of being heard in person or through a counsel: Provided further, that if the sum deposited by way of penalty under subsection (3) exceeds the amount directed to be paid by the Appellate Board, the excess amount shall be refunded to the appellant.

(6) The decision of the Appellate Board shall be final and no court, tribunal or other authority shall call, or permit to be called, in question any proceedings or order of the Appellate Board or the legality or propriety of anything done or intended to be done by the Appellate Board under this Act.

It is patently apparent that any person aggrieved by an order of the adjudicating officer may prefer an appeal to the Appellate Board within 30 days of such order. It is further seen that the Appellate Board

may entertain an appeal after the expiry of the said period, but not later than 60 days from the date of the aforesaid order, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the stipulated period.

6. The Impugned Order records that while the Judgment was rendered on 30.05.2018, the appeal there against was filed on 10.10.2018. Learned counsel for the petitioner had filed photocopies of the memorandum of appeal with a notation purporting to be the date of presentation of the said appeal, wherein the date of 15.09.2018 is recorded.

The document on record is a mere photocopy, devoid of any stamp or annotation with respect to the person who has appended the said notation. It is also noted that the same is accompanied by an application for condonation of delay of the same date, however, the affidavit in support thereof contains the stamp of Oath Commissioner / Commissioner for taking affidavits dated 02.10.2018. This appears to be a glaring irregularity as no justification has been advanced before us to justify how an appeal (and accompanying application) was presented on 15.09.2018 when the accompanying affidavit was not sworn till 02.10.2018. In the circumstances, it may suffice to say that the documentation referred to by the learned counsel for the petitioner is in itself contradictory, hence unreliable.

7. Notwithstanding the aforesaid observations, the application for condonation of delay filed by the appellants is on record and it contains the signature of the Advocate for the then appellants. The affidavit in

support thereof, referred to supra, has been signed and sworn by the present petitioner himself. It is *prima facie* manifest from the application itself that it admits a delay of 106 days in filing of the accompanying appeal and seeks condonation in respect thereof. This application is at complete variance to the submission of the learned counsel for the petitioner, who had argued that there was no delay in presentation of the appeal and that the findings of the learned appellate forum were erroneous in such regard.

8. There is yet another aspect to consider in this matter which is that the FER Act permits condonation of delay in filing of an appeal upon satisfaction that the appellant was prevented by sufficient cause from filing the appeal in time, subject to the proviso that this power may be exercised not later than 60 days from the date of order under appeal. It is clear from the condonation application filed in the appellate proceedings that the appeal was delayed at least by 106 days and as such the period of delay would in itself disentitle the appellants to the grant of the condonation. Even otherwise we have perused the affidavit filed along with the condonation application, filed by the present petitioner before the appellate forum, and observed that it is devoid of any grounds upon which the condonation for the delay in filing of the appeal was sought.

9. It is the considered opinion of the Court that the prescriptions of limitation are not mere technicalities and disregard thereof would render entire law of limitation redundant¹. It has been maintained by the Superior Courts consistently that it is incumbent upon the Courts to first determine whether the proceedings filed there before were within time

¹ *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as 2019 MLD 249.

and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard². Therefore, it follows that the appellate forum had rightly entered into the determination of limitation at the first instance.

10. It has been maintained by the honorable Supreme Court³ that each day of delay had to be explained in an application seeking condonation of delay and that in the absence of such an explanation the said application was liable to be dismissed. In the present facts and circumstances an application seeking condonation of 106 days' delay was filed before the appellate forum but the accompanying affidavit was devoid of any explanation whatsoever.

11. In view of the reasoning and rationale contained herein contained this Court was of the considered view that the learned counsel for the petitioner has failed to make out a case, hence, the present petition, along with pending application/s, was dismissed vide short order dated 20.11.2019. These are the reasons for our aforesaid short order.

J U D G E

J U D G E

Karachi.

21.11.2019

*Farooq PS/**

² *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

³ *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821.