

IN THE HIGH COURT OF SINDH AT HYDERABAD

CP No.S-402 of 2022 : Shahzada Faisal vs.
Mst. Jawahar & Others

For the Petitioner/s : Mr. Muhammad Asif Shaikh, Advocate.

For the respondent/s : Mr. Wali Muhammad Jamari Assistant
A.G Sindh.

Date/s of hearing : 24.10.2023.

Date of announcement : 24.10.2023.

ORDER

Agha Faisal, J. The present petition *inter alia* assails a dismissal of an appeal on the ground of limitation. Briefly stated Guardian & Wards Application No.13 of 2021 was filed before the Court of Civil Judge / Guardian Judge-VII, Hyderabad and the same was disposed of vide order dated 26.1.2022, pertinent constituents whereof are reproduced herein below:

"14. So, conclusion of entire discussion and in prevailing circumstances, it is crystal clear that, applicant has miserably failed to prove issue in his favour and it is not in the Welfare of minor that, his custody be disturbed by handing over to applicant, as such applicant is not entitled for the custody of minor.

15 Keeping the above facts, circumstances and precedents of Superior Courts in view, it could be safely concluded that the Applicant has failed to furnish any plausible ground for shifting the custody of the minor from Mother/opponent to Applicant/Father. Therefore, prima facie, the best interest and welfare of the minors lies with the Opponent/Mother.

16 However, being father of the minor/child the applicant is allowed meeting with the minor in this Court twice in a month subject to payment of fare charges in the sum of Rs.2000/-to the opponent. The issues No. 1&2 is replied accordingly.

17. With the upshot of the above discussion, the instant Application for permanent custody of minors is hereby declined with terms and conditions for interim custody/meetings of minor with the Applicant. The parties may, however, seek modification of this arrangement to cater for their mutual convenience, could be varied at any subsequent stage subject of the consent of both the parties."

2. Guardian Appeal No.11 of 2022 was filed before the 9th Additional District Judge, Hyderabad, admittedly beyond the limitation period, hence, it was dismissed vide judgment dated 29.03.2022 and the operative portion is reproduced herein below:

"In view of the above discussion, it is concluded that the appellant completely failed to show the sufficient cause to condone the delay in filing appeal which is hopelessly time barred. The appellant has to furnish explanation regarding the delay of each & every day but failed. It is well settled principal that the law helps vigilant not indolent. The instant appeal being hopelessly time barred stands dismissed with no order as to costs."

3. It is stated by the learned counsel that the welfare of the minor is at stake therefore the appeal ought not to have been dismissed on the mere technicality of limitation, hence, this petition

4. Heard and perused. 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 otiose¹. The Superior Courts have consistently maintained that it is incumbent upon the Courts to first determine whether the proceedings filed there before were within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard². The Superior Courts have held that an appeal barred by even a day could be dismissed³; once time begins to run, it runs continuously⁴; a bar of limitation creates vested rights in favour of the other party⁵; if a matter was time barred then it is to be dismissed without touching upon merits⁶; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance⁷. It has been maintained by the honorable Supreme Court⁸ that each day of delay had to be explained in an application seeking condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed.

5. It is imperative to denote that the appeal was admittedly time barred. The grounds seeking for the delay to be condoned were adjudged inadequate and no exception in such regard could be identified before this court. It is settled law that each day of delay has to be explained in seeking condoning of delay, however, in the present circumstances no reasonable explanation appears to have been provided.

6. Even otherwise, it is clear that the matter has been conclusively determined per the statutory hierarchy and finality is attached to the appellate order referred to supra. This petition assails the concurrent findings of the statutory hierarchy in the writ jurisdiction of this Court; however, the same has been disapproved by the Supreme Court in *Hamad Hasan*⁹ and earlier similar views were also expounded in *Arif*

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

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

³ 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

⁴ *Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

⁵ *Dr. Anwar Ali Sahito vs. Pakistan* reported as 2002 PLC CS 526; *DPO vs. Punjab Labour Tribunal* reported as NLR 1987 Labour 212.

⁶ *Muhammad Tufail Danish vs. Deputy Director FIA* reported as 1991 SCMR 1841; *Mirza Muhammad Saeed vs. Shahabudin* reported as PLD 1983 SC 385; *Ch Muhammad Sharif vs. Muhammad Ali Khan* reported as 1975 SCMR 259.

⁷ *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

⁸ *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821; *Qamar Jahan vs. United Liner Agencies* reported as 2004 PLC 155.

⁹ *Per Ayesha A. Malik J in M. Hamad Hassan vs. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

*Fareed*¹⁰. Therefore, in *mutatis mutandis* application of the reasoning and ratio illumined in conjunction with the deliberation supra, this petition is found to be devoid of merit, hence, dismissed with listed application.

Judge

Ahmed/Pa,

¹⁰ *Per Amin ud Din Ahmed J* in yet to be reported judgment dated 06.12.2022 delivered in *Arif Fareed vs. Bibi Sara & Others* (Civil Petition No.5601 of 2021).