

## IN THE HIGH COURT OF SINDH AT HYDERABAD

CP S-366 of 2023 : Ghulam Murtaza son of Abdullah Rind  
For the Petitioner/s : Mr. Mansoor Ali Panhwar, Advocate.  
For the respondent/s : Mr. Wali Muhammad Jamari, Assistant  
A.G Sindh.  
Date/s of hearing : 27.10.2023.  
Date of announcement : 27.10.2023.

### ORDER

**Agha Faisal, J.** Family suit No.582 of 2022 was filed against the present petitioner before the Court of Civil & Family Judge-XI, Hyderabad and the same was decreed vide judgment dated 31.08.2022. The appeal there against, Family Appeal No.11 of 2023, was dismissed by the Civil appellate Court VIth -Additional District Judge, Hyderabad vide judgment dated 27.01.2023 on the ground of being time barred.

Learned counsel submits that petitioner had no knowledge of the judgment and decree of the trial Court, however, admits that publication in such respect had also taken place. The issue of limitation was considered by the appellate Court and disregarded. The law requires Courts to first determine whether the proceedings filed there before are within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard<sup>1</sup>. The Superior Courts have held that proceedings barred by even a day could be dismissed<sup>2</sup>; once time begins to run, it runs continuously<sup>3</sup>; a bar of limitation creates vested rights in favour of the other party<sup>4</sup>; if a matter was time barred then it is to be dismissed without touching upon merits<sup>5</sup>; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance<sup>6</sup>. No infirmity could be demonstrated in respect of the finding on limitation delivered by the appellate court.

The jurisdiction enjoyed by this Court is not that of a subsequent appellate forum but merely to determine whether there is any jurisdictional defect; and it is the considered view of this Court that none could be demonstrated.

The matter has been conclusively determined and per statute, finality is attached to the appellate order referred to supra. This petition

<sup>1</sup> *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

<sup>2</sup> 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

<sup>3</sup> *Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

<sup>4</sup> *Dr. Anwar Ali Sahito vs. Pakistan* reported as 2002 PLC CS 526; *DPO vs. Punjab Labour Tribunal* reported as NLR 1987 Labour 212.

<sup>5</sup> *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.

<sup>6</sup> *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

*prima facie* unjustifiably assails the successive 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*<sup>7</sup> and earlier similar views were also expounded in *Arif Fareed*<sup>8</sup>. Therefore, in *mutatis mutandis* application of the reasoning and ratio illumined, this petition is found to be misconceived, hence, dismissed with listed application.

Judge

Ahmed/Pa,

---

<sup>7</sup> Per Ayesha A. Malik J in *M. Hamad Hassan vs. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

<sup>8</sup> 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).