IN THE HIGH COURT OF SINDH
AT HYDERABAD

CP S 335 of 2023	:	Mashooque Ali Vs. Mst Maria.
For the petitioner	:	Mr. Abdul Rasheed Abro, Advocate
Date/s of hearing	:	22.11.2023.
Date of announcement	:	22.11.2023.

O R D E R

Agha Faisal, J. The present petition was dismissed for non-prosecution on 30.10.2023. Upon application, notice whereof was issued on 17.11.2023, the same stands restored and the learned counsel is asked to address on maintainability.

Briefly stated, Family Suit 211 of 2023 was filed before the Family Judge Jamshoro, and the same was allowed vide judgment dated 18.11.2022. As a consequence thereof the plaintiff, Mst. Maria, was found entitled for grant of khula in lieu of dower amount, maintenance and return of dowry articles etc.

An *admittedly* time barred appeal, Family Appeal Nil of 2023, was filed before the District Judge Jamshoro along with an application under section 5 of Limitation Act 1908 and vide order dated 11.07.2023 the learned District Judge Jamshoro dismissed the said application and consequently the family appeal The operative portion is reproduced herein below:

> "Heard learned advocate for appellant and perused the record which reveals that the impugned order was passed on 29.04.2023 in Family Suit No.211/2022 re: Mst. Maria Vs. Mashooque Ali. The appellant filed this Family Appeal on 31.5.2023 with the delay of two days, hence learned Advocate for appellant filed application under section 5 of Limitation Act to condone delay in filing appeal. The perusal of record shows that learned Advocate for appellant filed application for certified true copy of impugned order on 12.05.2023 before the trial Court and on the same day, such copy was delivered to him, without delay of even a single day. Prior to this, on 26.05.2023 the appellant had filed Family Appeal against the ex-parte judgment and decree of the trial Court dated 18.11.2022, which was withdrawn on 31.05.2023 and on the same date i.e 31.05.2023 instant Family Appeal was filed against the order dated 29.04.2023. This shows that appellant was in knowledge about the order dated 29.4.2023, but such ignorance or mistake on the part of appellant cannot be held as a ground for condonation of delay. No any cogent ground has been taken to justify the delay of two days in filing of Family Appeal. It is settled principle of law that, for seeking condonation of delay, sufficient cause is to be shown for default and each day of delay is to be explained before the Court which seems to have not been done by the appellant.
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> In view of above discussion, application under Section 5 of Limitation Act stands dismissed. Eventually, the Family Appeal is also dismissed being time barred."

Petitioner's counsel submits that the delay ought to have been condoned and a mere technicality of limitation could not be relied upon to nonsuit the petitioner. It is the petitioner's case that since no provision of appeal is available thereto, hence, the present petition.

Heard and perused. It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided[1], and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law[2] that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless

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[1] Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

[2] Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.

same was contrary to law or usage having the force of law. The impugned judgment appears to be well-reasoned and the learned counsel has been unable to demonstrate any manifest infirmity therein or that it could not have been rested upon the rationale relied upon.

The Supreme Court has recently had occasion to revisit the issue of family matters being escalated in writ petitions, post exhaustion of the entire statutory remedial hierarchy, in *Hamad Hasan*[3] and has deprecated such a tendency in no uncertain words. It has *inter alia* been illumined that in such matters the High Court does not ordinarily appraise, re-examine evidence or disturb findings of fact; cannot permit constitutional jurisdiction to be substituted for appellate / revisionary jurisdiction; ought not to lightly interfere with the conclusiveness ascribed to the final stage of proceedings in the statutory hierarchy as the same could be construed as defeating manifest legislative intent; and the Court may remain concerned primarily with any jurisdictional defect. Similar views were earlier expounded in *Arif Fareed*[4].

Admittedly the appeal was time barred. An application seeking to condone the delay was preferred; 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[5]. The Superior Courts have held that proceedings barred by even a day could be dismissed[6]; once time begins to run, it runs continuously[7]; a bar of limitation creates vested rights in favour of the other party[8]; if a matter was time barred then it is to be dismissed without touching upon merits[9]; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance[10]. No infirmity could be demonstrated in respect of the finding on limitation delivered by the appellate court.

It is the deliberated view of this Court that the present petition does not qualify on the anvil of *Hamad Hasan* and *Arif Fareed*. Therefore, in *mutatis mutandis* application of the ratio illumined, coupled with the rationale delineated supra, this petition is found to be misconceived, hence, hereby dismissed along with listed application.

Judge

A.Rasheed/stenographer

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[3] *Per Ayesha A. Malik J* in *M. Hamad Hassan v. Mst. Isma Bukhari & Others* reported as *2023 SCMR 1434*.

[4] *Per Amin ud Din Ahmed J* in *Arif Fareed vs. Bibi Sara & Others* reported as *2023 SCMR 413*.

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

[6] *2001 PLC 272*; *2001 PLC 143*; *2001 PLC 156*; *2020 PLC 82*.

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

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

[9] *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*.

[10] *WAPDA vs. Aurangzeb* reported as *1988 SCMR 1354*.