

# IN THE HIGH COURT OF SINDH AT HYDERABAD

CP S-236 of 2023 : Mst. Rizwana Vs. Abdul Sattar  
For the petitioner : Mr. Suleman Dahri, Advocate  
Date/s of hearing : 29.11.2023.  
Date of announcement : 29.11.2023.

## ORDER

**Agha Faisal, J.** In view of the arguments, MA No.1804 of 2023 is allowed and petition is restored. Learned counsel is called upon to argue upon the maintainability of the case.

Learned counsel was confronted with the maintainability hereof in view of Supreme Court's judgments in *Hamad Hasan*<sup>1</sup> and *Arif Fareed*<sup>2</sup>, which disapproved of agitation of family matters in writ petition, however, the counsel remained unable to demonstrate the existence of any jurisdictional defect meriting recourse to writ jurisdiction.

Notwithstanding the foregoing, it is observed that the appellate judgment dated 10.05.2023, rendered by the Court of Additional District Judge Shahdadpur in Family Appeal No.25 of 2022, dismissed an application under section 5 of Limitation Act 1908 and also the appeal as consequence thereof. It was contended by the counsel that the appellate court ought to have taken lenient view and not non-suited the petitioner on a mere technicality.

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<sup>3</sup>, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law<sup>4</sup> 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 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*<sup>5</sup> 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

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<sup>1</sup> Per Ayesha A. Malik J in *M. Hamad Hassan v. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

<sup>2</sup> Per Amin ud Din Ahmed J in *Arif Fareed vs. Bibi Sara & Others* reported as 2023 SCMR 413.

<sup>3</sup> Per Ijaz ul Ahsan J in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as PLD 2021 Supreme Court 391.

<sup>4</sup> 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.

<sup>5</sup> Per Ayesha A. Malik J in *M. Hamad Hassan v. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

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*<sup>6</sup>.

*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<sup>7</sup>. The Superior Courts have held that proceedings barred by even a day could be dismissed<sup>8</sup>; once time begins to run, it runs continuously<sup>9</sup>; a bar of limitation creates vested rights in favour of the other party<sup>10</sup>; if a matter was time barred then it is to be dismissed without touching upon merits<sup>11</sup>; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance<sup>12</sup>. 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* and even otherwise no case is made out to interfere in respect of the findings on limitation. 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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<sup>6</sup> *Per Amin ud Din Ahmed J in Arif Fareed vs. Bibi Sara & Others* reported as 2023 SCMR 413.

<sup>7</sup> *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

<sup>8</sup> 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

<sup>9</sup> *Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

<sup>10</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>11</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>12</sup> *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.