

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

1st Appeal 19 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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05.12.2023.

Mr. Noor Ahmed Memon, Advocate for appellants
Mr. Pevez Tariq Tagger, Advocate for respondent

Briefly stated, Summary Suit No.47 of 2010 was determined vide judgment dated 05.10.2015 by VII Additional District Judge Hyderabad. The present appeal was preferred on 06.06.2016, *admittedly* time barred in view of Article 156 of Limitation Act, 1908.

The appellant has preferred an application under section 5 of Limitation Act, 1908 and only ground taken is that the then counsel did not intimate the appellant within time. Such a bald and unsubstantiated averment does not merit the delay being condoned. A party is required to remain vigilant with respect to legal proceedings; more so when the same have been preferred by the party itself. The delay occasioned in preferring the appeal is apparent and admitted. Under such circumstances it is the issue of limitation that must be determined first.

It is the considered opinion of the Court that disregard of limitation 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.

It is imperative to denote that the appeal is *admittedly* time barred. The ground employed seeking for the delay to be condoned is *prima facie* inadequate. It is settled law that each day of delay has to be explained in seeking condoning of delay, however, in the present

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.

circumstances no reasonable explanation appears to have been provided, hence, the application seeking for the delay to be condoned is hereby dismissed. As a consequence, the present appeal is found to be time barred, therefore, dismissed along with pending applications.

Judge

A.Rasheed/stenographer