

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No.14 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objections
2. For hearing of main case

08.12.2023

Rana Rahail Mehmood advocate for applicant.

Briefly stated, F.C. Suit No.247 of 2009 was filed before Senior Civil Judge Mirpurkhas for performance of a contract. The same was dismissed on maintainability and merit vide judgment dated 27.07.2015. Insofar as the issue of maintainability was concerned, the trial Court held that the suit was barred by limitation and on merits of the case it was found that the plaintiff remained unable to discharge his burden of proof. Civil Appeal 26 of 2015 was filed before the District Judge Mirpurkhas and the same was dismissed vide judgment dated 16.10.2021. The appellate court concurred with the judgment of the trial Court on maintainability as well as on merit.

The present revision is articulated to be rested on the premise that the evidence was not appreciated in its proper perspective by the forums below. Insofar as the issue of limitation is concerned, no argument has been advanced to displace the finding rendered by the respective courts.

Heard and perused. The delay in preferring the suit has been adequately particularized in the initial order and subsequently in the appellate judgment. Learned counsel articulated no cavil to the narration of delay and remained unable to dispel the preponderant record / dates relied upon to render the findings of the suit being time barred.

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 proceedings 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

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.

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 pertinent to observe that the preponderant bar of limitation could not be dispelled by the appellant before the relevant courts and no case has been set forth herein to suggest any infirmity in the findings rendered in such regard.

The learned counsel was unable to cite a single ground based upon which the jurisdiction of this Court could be exercised under section 115 of Code of Civil Procedure. There is no suggestion that the either impugned order is an exercise without jurisdiction or a failure to exercise jurisdiction or an act in exercise of jurisdiction illegally or with any material irregularity. It is trite law⁹ that where the forum 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. It is the considered view of this court that no manifest illegality has been identified in the order impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate forum. In view hereof, this revision is found to be misconceived and devoid of merit, hence, hereby dismissed *in limine*, along with listed applications.

Judge

Ali Haider

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 *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.