

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

R.A. No.S— 20 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
1.	For order on CMA 326/2023
2.	For order on CMA 327/2023
3.	for order on CMA 328/2023
4.	for order on CMA 329/2023 (41 R.5)
5.	for hearing of CMA 1714/2023 (41 R.5)
6.	for hearing of main case.

20.12.2023.

Mr. Shankar Menghwar, Advocate for Applicants

2. This is an application under section 5 of the Limitation Act, 1908. The impugned order is dated 07.10.2022. It is noted that order was issued in Civil Appeal by the District Judge Tharparkar at Mithi and the appeal was dismissed *in limine* being time barred. The relevant portion is reproduced herein below:

“The learned Advocate has contended that the learned trial Court has decreed the Suit of the respondent No.1 to 6/plaintiffs vide judgment & decree dated 16.2.2022 & 18.2.2022 respectively and during trial, the appellants/defendants No.1 to 9 were under compulsive situation of financial crisis and even unable to earn one time meal, therefore, they left district Tharparkar along with their families and took abode to barrage area for their livelihood and not in position to attend the hearing of the Suit and besides it, they are illiterate and village persons, they were unaware about law and couldn't face the matter and even couldn't contact with their counsel in connection with Suit and now when the respondents/plaintiffs filed execution application before the trial Court and notice thereof was served upon them, then they contacted with their Advocate who informed them about the impugned judgment & decree. He has further contended that the delay in filing of the appeal was beyond the control of the appellants/defendants No.1 to 9 which was not deliberately caused and such delay caused in filing of appeal, may kindly be condoned.

Keeping in view the arguments advanced by the Advocate for the appellants, I put a glance over the case file which demonstrates that the appellants/defendants contested the Suit, filed their written statement before the trial Court. At the trial, both the parties were at liberty to adduce their evidence, but only the respondents/plaintiffs adduced their evidence, but the appellants/defendants No.1 to 9 didn't led their evidence inspite of affording sufficient opportunities, thereby their side of evidence was closed by the trial Court per order sheet dated 17.12.2021, and after hearing the counsel for respondents/plaintiffs and on the basis of their evidence, the learned trial Court vide impugned judgment & decree dated 16.02.2022 & 18.02.2022, decreed the Suit of the respondents/plaintiffs. From the perusal of record, it reveals that the appeal has been filed after the expiry of appeal period and for much delay of six months & 20 days in filing of appeal, no any plausible explanation & reason is furnished by the appellants/defendants. They have only submitted reason of delay that were under compulsive situation of financial crisis and even unable to earn one time meal, therefore, they left district Tharparkar along with their families and took abode to barrage area for their livelihood and not in position to attend the hearing of the Suit and besides it, they were illiterate and village persons, they were unaware about law and couldn't face the matter and even couldn't contact with their counsel in connection with Suit and now

when the respondents/plaintiffs filed execution application before the trial Court and notice thereof was served upon them, then they contacted with their Advocate who informed them about the impugned judgment & decree. The dates reveals that the instant impugned judgment has been passed on 16.02.2022 and decree prepared on 18.02.2022 and they could have filed the appeal within the stipulated time, but such reason of the appellants is unbelievable, indiscernible and afterthought only to fill up the gaps. Moreover, the certified true copy of the judgment & decree attached with the memo of appeal & decree reveals that the appellants have applied for grant of certified true copies thereof on 30.08.2022 and the same were delivered to them on 01.09.2022 within two days, which reveals that they have also got certified true copies of the impugned judgment & decree after the lapse of appeal period. The law helps the vigilant but not to the indolent. It is settled law that limitation once started, it cannot be stopped or interrupted and the appellants have failed to furnish the believable, solid and valid reason/explanation of each and every day caused in delay in filing of appeal, therefore, the application U/S 5 of Limitation Act is hereby dismissed and simultaneously the appeal of the appellants/defendants No.1 to 9 is also dismissed in limine being time barred. There will be no order as to cost”.

The present, *admittedly* time barred, revision was filed on 28.01.2023 hence this application. It is noted with much trepidation that notwithstanding the fact that the underlying appeal was dismissed in limine on account of being time barred and the present revision also being time barred, *ad interim* orders were obtained herein suspending execution proceedings, *prima facie* not even impugned herein.

Be that as it may, despite repeated requests, learned counsel for the applicant professes his inability to proceed with the matter. Perusal of affidavit in support of the application demonstrates the ground invoked is that there was a traffic accident in the appellant's family and that the appellant was in a financial fix.

The delay in preferring the revision, to an order of dismissal on account of the appeal being barred by limitation, is admitted and the unsubstantiated assertions, devoid of any explanation or articulation by counsel, could not be sustained as a justification for each day of delay.

In so far as the issue of limitation is concerned, it is the considered opinion of the Court that the same cannot be considered to be mere technicalities as disregard thereof would render entire law of limitation otiose<sup>1</sup>. 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 regard<sup>2</sup>. The Superior Courts have held that proceedings barred by even a day could be dismissed<sup>3</sup>; once time begins to run, it runs continuously<sup>4</sup>; a bar of limitation creates vested rights in favour of the other party<sup>5</sup>; if a matter was time barred then it is to be dismissed without touching upon merits<sup>6</sup>; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance<sup>7</sup>. It has been

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<sup>1</sup> *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as 2019 MLD 249.

<sup>2</sup> *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

<sup>3</sup> 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

<sup>4</sup> *Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

<sup>5</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>6</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>7</sup> *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

maintained by the honorable Supreme Court<sup>8</sup> 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 appellants' counsel.

In the present case, the delay has not been adequately explained or justified, hence, no case for is made out to condone the delay, therefore, the application seeking for the delay to be condoned is hereby dismissed.

1,3,4,5&6: As a consequence the present revision is found to be time barred, therefore, dismissed along with listed applications.

The office is instructed to communicate a copy hereof to the appellate court as well as the executing court.

Judge

*A.Rasheed/stenographer*

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<sup>8</sup> *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821; *Qamar Jahan vs. United Liner Agencies* reported as 2004 PLC 155.