

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

R.A. 41 of 2011

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

1. for order on CMA 167/2011 (S/A)
2. for hearing of main case.

21.12.2023.

Mr. Wali Muhammad Jamari, Advocate for applicant
Mr. Parkash Kumar, Advocate for respondents

This revision is pending since 2011 without any progress. Under challenge is the order dated 03.12.2010 passed by the 1st Additional District Judge Badin in Civil Appeal No.139 of 2010 whereby appeal was dismissed on account of being time barred. It is considered illustrate to reproduce the order herein below:

“Heard Mr. Aneees Ahmed Junejo, Learned DDA for the State and also perused the record and application under section 5 of Limitation Act. He urges that the appellant was very to close the breach in Matli branch at RD No.1, therefore, he could not file the appeal in time. He argued that he appeal is delayed for about 12 days. I have perused the Decree passed on 29.09.2010, and the appellant applied for copy on 04.10.2010, cost was paid on 04.10.2010, copy was prepared on 16.10.2010 and the appellant received copy on 18.10.2010. Since 18.10.2010 to 12.11.2010, the appellant not filed appeal. The appellant has to explain on each and every delay for filing of appeal but in the present case, the appellant has miserably failed to explain such delay in filing of the appeal and mere saying that the appellant was busy to close the breach in Matli Branch at RD-No.1 without any proof, therefore, I do not find any cogent ground to condone the delay in filing of the appeal, hence the application under section 5 of Limitation Act stand dismissed. Consequently, the appeal is barred by law, hence the same stand dismissed in limini”.

The present revision assails the afore mentioned order and the learned Addl. A.G. articulates that delay was caused due to inclement weather / floods and in any event the Government ought not to be non-suited on the mere technicality of limitation.

On the contrary, learned counsel for respondents opposes the revision and submits that it is settled law that no special treatment could be given to the Government in limitation matters¹.

Heard and perused. The delay in preferring the appeal has been adequately particularized in the impugned order. 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 appeal 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 otiose². The Superior Courts have consistently

¹ Reliance was placed upon 2012 SCMR 136; 2006 SCMR 676; 2001 SCMR 1768; 2002 SCMR 677; PLD 2003 SC 6.

² *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as 2019 MLD 249.

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 regard³. The Superior Courts have held that proceedings barred by even a day could be dismissed⁴; once time begins to run, it runs continuously⁵; a bar of limitation creates vested rights in favour of the other party⁶; if a matter was time barred then it is to be dismissed without touching upon merits⁷; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance⁸. It has been maintained by the honorable Supreme Court⁹ 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. The Supreme Court has consistently maintained that no preferential treatment is to be meted out to the Government in respect of limitation qua civil matters¹⁰. It is pertinent to observe that the preponderant bar of limitation could not be dispelled by the appellant before the relevant court 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 law¹¹ 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, along with listed application.

Judge

A.Rasheed/stenographer

³ *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

⁴ 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

⁵ *Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

⁶ *Dr. Anwar Ali Sahito vs. Pakistan* reported as 2002 PLC CS 526; *DPO vs. Punjab Labour Tribunal* reported as NLR 1987 Labour 212.

⁷ *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.

⁸ *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

⁹ *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821; *Qamar Jahan vs. United Liner Agencies* reported as 2004 PLC 155.

¹⁰ Per *Iftikhar Muhammad Chaudhry J* in *Chairman Railways vs. Muhammad Sharif Javaid Warsi* reported as PLD 2003 SC 6.

¹¹ 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.