

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1416 of 2007
Suit No.1669 of 2008

Date	Order with signature of Judge(s)
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1. For hearing of CMA No.7247/2018.
2. For hearing of CMA No.7248/2018.

05.08.2024

Mr. Abdul Samad Memon, advocate for the plaintiff.
Mr. Yousuf, advocate for the defendants No.5 to 7.
Mr. Muhammad Javed, Assistant Advocate General Sindh.

This suit was dismissed for non-prosecution vide order dated 28.02.2018. The order is reproduced herein below:

“28.02.2018

None present for the Plaintiff.
Mr. Mansoor Ali Ghangro, Advocate for the Defendant No.1.
Mr. Munawar Juna holding brief for Mr. Khalid Javed, Advocate for Defendants No.5, 6 & 7.
Mr. Sharafuddin Mangi, State Counsel.

None present for the plaintiff nor any intimation received. On 20.04.2017, the Vakalatnama of the Counsel then appearing for the Plaintiff was discharged as a proper notice was served upon the Plaintiff by the then Counsel. Directions were issued to issue intimation notice directly to the Plaintiff and record reflects that such notice stands served, however, neither any Counsel has been engaged nor any body is in attendance, whereas, Counsel for Defendant No.1 submits that this Court has otherwise no jurisdiction in the matter as the land is situated, outside of territorial jurisdiction of Karachi and in support he has relied upon Orders passed in Suit No.421/1987 and in Suit No.247/2008.

Be that as it may, since no one is proceeding with this matter despite service of notice after discharge of the Vakalatnama, instant Suit is dismissed for non-prosecution alongwith pending applications.”

An admittedly time barred application for restoration was filed under order 9 rule 9 CPC and the same was accompanied by another application per section 5 of the Limitation Act, to have the delay condoned. It is considered just and proper to take up limitation application in the first instance.

The only reason pleaded and articulated for the admitted delay is that the earlier counsel had withdrawn from representing the plaintiff, albeit after service of notice per rule 50 SCCR. Thereafter, the plaintiff changed several successive advocates, culminating in the present counsel, and the successive names have perhaps not appeared in the cause list in the manner desired. Upon query, as to why plaintiff or any successive counsel engaged failed to obtain information regarding fixation of the suit from the office, no reply was given.

The delay in preferring the application has not been denied. 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 a technicality as

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 favor 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 pertinent to observe that the preponderant bar of limitation could not be dispelled by the learned counsel.

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 persistent truancy of the applicant from the proceedings under scrutiny is *prima facie* apparent and the same has also been admitted by the counsel. Under such circumstances it was the prerogative of the Court to determine the proceedings. Counsel remained unable to justify the persistent absence and no case has been made out to condone the default. The Supreme Court has observed in *Nadeem H Shaikh*⁹ that the law assists the vigilant, even in causes most valid and justiciable. The fixation of cases before benches / courts entails public expense and time, which must not be incurred more than once in the absence of a reason most genuine and compelling. Default is exasperating and such long drawn ineptitude cannot be allowed to further encumber pendency of the Courts.

In view hereof, the application seeking to condone the delay is found to be without merit, hence, dismissed. As a consequence thereof the restoration application is dismissed as being barred by limitation.

Judge

Khuhro/PA

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.

³2001 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.

⁹ Per Qazi Muhammad Amin Ahmed J. in *SECP vs. Nadeem H Shaikh & Others (Criminal Appeal 518 of 2020)*; Order dated 27.10.2020.