

# **IN THE HIGH COURT OF SINDH AT KARACHI**

Present:

Mr. Justice Muhammad Shafi Siddiqui, CJ  
Mr. Justice Jawad Akbar Sarwana

## **Ist Appeal No.54 of 2023**

### **Taha Bin Abu Talha v. Ahsaan Yousuf**

Appellant: Taha Bin Abu Talha,  
Through Mr. Naseer Nehal  
Hashmi, Advocate

Respondent No.1: Ahsaan Yousuf,  
Through Mr. Saeed Ahmed,  
Advocate

Respondent No.2: XIth Additional District Judge,  
at Karachi East

Date of hearing  
and Short Order: 11.12.2024

Date of Reasoning: 10.01.2025

## **J U D G M E N T**

**JAWAD AKBAR SARWANA, J.:** This Ist Appeal is filed against the Judgment dated 29.04.2023 passed by the XIth Additional District & Sessions Judge Karachi East ("trial Court") in the Summary Suit No.91/2022 filed by the Respondent/Plaintiff, Ahsaan Yousuf, against the Appellant/Defendant, Taha Bin Abu Talha (hereinafter referred to as "TBAT").

2. The Respondent/Plaintiff, Ahsaan Yousuf, alleged in the Summary Suit that TBAT had given him cheque No. CA0081790982 dated 01.01.2022 in the sum of Rs.1,60,00,000/- which cheque was dishonoured; hence, the Summary Suit against TBAT.

3. Counsel for TBAT contended that the leave-to-defend application filed by him in the Summary Suit was within time as although he was served the summons on Form IV of Appendix B, CPC, yet TBAT was incarcerated and, according to TBAT's Counsel, Respondent Counsel had undertaken to supply a copy of plaint to TBAT's lawyer during the proceedings of the Summary Suit. Respondent/Plaintiff did not reject TBAT's Counsel's request. During proceedings, the trial Court granted time to TBAT's Counsel to file a leave-to-defend application under O37 R3

CPC, and he filed such leave-to-defend application within the timeframe granted to him by the Court. He contended that the trial Court ignored this aspect and considered his leave-to-defend application to be barred by time. As a result, he was not allowed to lead evidence and prove his defence. Therefore, impugned Judgment was/is bad in law and liable to be set aside.

4. Learned Counsel for the Respondent vehemently opposed the contentions of the Appellant and submitted that even if the leave-to-defend application was filed within time, the evidence which the Respondent had brought on record clearly established the Respondent's claim against TBAT. Hence, no grounds to set aside the impugned Judgment have been made out in this Appeal.

5. Heard learned Counsel and perused the record. It appears from the documents available in the 1st Appeal that on 11.08.2022, the Advocate for TBAT had filed an undertaking to enter appearance, and the case was put off to 17.08.2022 for the supply of a copy of the plaint. Thereafter, on 17.08.2022, although a copy of the pleadings was available with the Respondent's Counsel, but Counsel for TBAT was absent, and therefore, he could not be handed the copy of the plaint, and the matter was adjourned to 23.08.2022. On the next date, i.e., 23.08.2022, TBAT Counsel received a copy of the plaint. This meant the limitation period prescribed for filing leave-to-defend application under O37 R3 CPC within 10 days was triggered.<sup>1</sup> TBAT was now obliged to file his leave-to-defend application on or before 03.09.2022. The matter was fixed for hearing on 02.09.2022. TBAT's Advocate was once again absent on the said date, and according to the diary sheet, the matter was adjourned on the following terms:

**“ . . .Case put off to 05.09.2022 for filing of application for leave to defend.”**

6. According to a plain reading of the diary sheet of 02.09.2022, it appears that although the Presiding Officer was on leave on 02.09.2022, the matter was adjourned nevertheless for the purpose of: “for filing of application for leave to defend”. Although a day was still left for the period of limitation to expire, i.e., on 03.09.2022, yet the limitation had not expired on 02.09.2022. Leave to defend would have become time-barred the next

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<sup>1</sup> *Ali Akbar v. Gulzar Ali Shah*, PLD 1984 Karachi 252 (Saleem Akhtar, J.), and *Muhammad Yasin v. Shaikh Muhammad Pervaiz*, 2012 CLC 1141 (DB)

day, i.e., 03.09.2022. The onus would have been on the Defendant/TBAT to file the leave to defend in the branch/office before the date of expiry, i.e., on 03.09.2022; otherwise, the leave-to-defend application would have become time-barred. We are not impressed with the Counsel's contention that how the trial Court's diary sheet articulated the adjournment; it appears that the time for filing leave to defend had been, in fact, condoned by the trial Court. Counsel's understanding is misconceived.

7. In its infinite wisdom, the trial Court could have adjourned the case to 05.09.2022 without mentioning any purpose or directions to TBAT to file his leave-to-defend application. Indeed, the trial Court did not have to be so directive in its diary sheet. A hands-off approach would have left the matter for TBAT to file the leave-to-defend application. The trial Court could have simply stated that the case was adjourned to 05.09.2022. This would have made it sufficiently clear to all that the period of limitation would remain operative and would expire on 03.09.2022. Yet, even if it could be argued that the trial Court's diary sheet left an impression on TBAT and his Counsel that they could still file the leave-to-defend application until 05.09.2022, this was no excuse for them to file the leave-to-defend application beyond the statutory period of limitation.

8. The Court's diary sheet must always be understood in light of the law. Inference(s) pleaded as above by TBAT and his pleader did not accrue any statutory rights of limitation, either procedural or substantive. In the facts and circumstances, the limitation period was neither extended nor condoned by the Court nor could it be deemed as such based on impressions/inferences. A Court cannot extend limitation by mere impression, nor can the party assume it has acquired such rights based on its own impression/inference. Nothing on record suggested that the limitation period stood extended within the framework of the Limitation Act, 1908 or the Civil Procedure Code, 1908. Neither the Court nor the parties took any steps or otherwise to extend the statutory bar of time by conduct. No extension of time was granted to the Appellant/Defendant. Regarding TBAT's contention concerning the condonation of time, the act must first occur to condone it. Thereafter, such action can be condoned, i.e. after its occurrence. An act cannot be condoned before its occurrence. The diary of 02.09.2022 does not give any impression of condonation. Even otherwise, the period of limitation had not expired on 02.09.2022. The condonation of limitation could only have taken place after the occurrence, i.e., the expiration of the limitation period, and not before. Therefore, there was no condonation of limitation as of 02.09.2022 because there was

nothing there to condone. Subsequently, when the limitation of filing the leave-to-defend application expired by 03.09.2022, there is nothing available in the Court's diary sheet on the next date of hearing, i.e. 05.09.2022, to suggest on the part of the Court that it expressly condoned the time-barred limitation period for filing leave-to-attend. Therefore, there is no ground available for TBAT's Counsel to argue that the trial Court's diary sheet left an impression on TBAT and his pleader that the Court had either extended or condoned the statutory period of limitation for filing of the application for leave-to-defend.

9. A Presiding Officer is not obliged to state the purpose of future hearings expressly, for example, that a future hearing is for the filing of a counter-affidavit or written statement, or for the future filing of an application for leave-to-defend, etc. Of course, this does not mean that the diary sheet should not record the proceedings that occur on the hearing date. So, for example, say if a counter-affidavit or written statement is not filed, it would be proper to record that it wasn't. Similarly, if a leave-to-defend application is not filed in a summary suit, it would be proper for the Presiding Officer to record in the diary sheet of that particular hearing that no leave-to-defend application was filed on such a hearing date. There was no need for the Presiding Officer to suggest in the diary sheet directions to parties in aid of compliance with the law, such as stipulating time "for filing of application for leave to defend".

10. An examination of the Sindh Civil Courts Rules ("SCCR") reveals that all dates before the civil court are dates of hearing subject to the principles of natural justice and due process. Rule 15 of the SCCR relates to "Dates to be fixed by Judge" and states that dates shall be fixed in each case by an order in writing from the Judge. Rule 17(1), which pertains to matters to be considered in fixing dates requires that dates be fixed with reference to the convenience of the parties, current business of the Court and the prospect of cases being heard. Parties may be given sufficient time to enable them to take the necessary steps towards getting their cases ready for hearing. Order XVII of the Civil Procedure Code, 1908, concerning "Adjournments", also does not mandate benches to mention the precise purpose for future hearing dates. The upshot of these provisions/rules is that there is no ground for written orders to specify the specific purpose for which a case is being listed for future hearings. A Presiding Officer is not mandated to assign purpose and reasons for upcoming hearing dates, specifying what he intends to hear or not on the next hearing date. The scheme of the Civil Courts Rules places no such

requirement on the Presiding Officer. It is his/her discretion. Indeed, it would be contrary to the scheme of the Sindh Civil Courts Rules when a matter is adjourned to mandatorily specify the precise purpose of the future hearing mandatorily.

11. When TBAT did not file leave-to-defend application, the Presiding Officer should have recorded this fact alone. No further explanation was necessary as to why the case was being adjourned. It is the responsibility of Counsels/parties to remain vigilant and ensure that whatever is needed to be placed in the docket or to be done, which will aid the hearing before the Presiding Officer, is in place in the file or completed on or before the upcoming date of hearing. Advocates/parties should be well aware of the law and the consequences that flow from it if they do not take action in a matter which is coming up for hearing, and such action/inaction will be the subject matter of the next hearing date before the Presiding Officer. Parties/pleaders need not be reminded of their duties and the law by the Presiding Officer. The Presiding Officer and the parties should be ready to proceed with the hearing on each and every date of hearing. Valuable vested rights may accrue to the parties due to (i) the action and inaction of parties during civil proceedings and (ii) the trial Court's diary sheet recording the proceedings and assigning the future hearing date. Presiding Officers should be conscious when writing the diary sheet and day-to-day orders about articulating the content of the diary sheet/order so as not to prejudice the rights of any party.

12. In the present case, the trial Court did not adjourn the matter simpliciter; it adjourned the case with the purpose of "for filing application for leave to defend." Yet for the reasons discussed herein, the Court neither extended nor condoned the limitation period for TBAT, and the latter cannot be released from the statutory period of ten (10) days time to file the application for leave-to-defend on his mere understanding of the diary sheet. Limitation accrues vested rights and must be read equally, strictly, and narrowly for both parties. As per the diary sheet, neither the Appellant/Defendant requested an extension of time on 02.09.2022 nor did he file any application for condonation of time for filing application for leave-to-defend on or after 05.09.2022. Earlier, the Respondent/Plaintiff's Counsel, by his conduct as recorded in the diary sheet, had agreed to supply a copy of the Plaint to TBAT without raising any objections in spite of TBAT being served summons on Form IV of Appendix B of the CPC. Yet by the time when TBAT filed his leave-to-defend application on 05.09.2022, such filing was barred by time. We are constrained to allow

TBAT and his counsel to file his leave-to-defend application beyond the period of limitation. In our opinion, based on the facts and circumstances described hereinabove, the leave-to-defend application was filed after the time for its filing had expired. We agree with the findings of the learned trial Court that leave to defend was barred by time.

13. Even if the leave to defend could be found to be within time, regrettably, no case can be made for TBAT. In his application for leave to defend, the Appellant/TBAT has admitted in Paras 3 and 5 that the post-dated cheque in question, which was ultimately dishonoured, was issued as a “guarantee/security”. Such admission on the Appellant/TBAT’s part about issuing a post-dated cheque is fatal to TBAT’s defence. Accepting the genuineness of the cheque and its lawful purpose as a “guarantee/security” on the part of TBAT under oath means that there is nothing left for the Respondent/Plaintiff to prove in his summary claim, which is a “fast-track” remedy. TBAT has admitted on oath that the cheque’s purpose is for the guarantee/security. He cannot step into the witness box and deny his admission. Furthermore, the Appellant/TBAT’s Counsel was at liberty to cross-examine the Respondent/Plaintiff’s witness to support his defence and/or shake the credibility of the Respondent/Plaintiff’s witness, but the Counsel did not do so. The trial Court has allowed the Summary Suit on merits, not just on the point of bar of the limitation. In the facts and circumstances of the case, the Appellant will not be deprived of any right of due process. No useful purpose can now be served to prolong what is ultimately the correct judicial decision of the dispute based on the record available to us. Even if this Court sets aside the impugned judgment and the trial Court has to record evidence of TBAT, the trial Court’s decision, as articulated in the impugned judgment on merits and for the reasons given hereinabove, cannot be shaken, is well-reasoned, proper and in accordance with the law.

14. Given the above, we did not find any reason to interfere with the impugned judgment passed by the trial Court; hence, this 1st Appeal was dismissed by a short order dated 11.12.2024. The above are the reasons for the dismissal of the 1st Appeal with no order as to costs.

JUDGE

CHIEF JUSTICE

