

Time barred.

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ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
Civil Revision Application No.90 of 2022

Date _____ Order with signature(s) of Judge(s) _____
Hg: of Case/Priority.

1. For orders on office objections.
2. For orders on CMA No.4406/22
3. For orders on CMA No.4407/22
4. For hearing of main case.

21.08.2024.

Mr. Naveed holding brief for Mr. Farjad Ali Khan, Advocate for the Applicant.

Mr. Liaquat Ali, Advocate for Respondent.

Mr. Shehreyar Qazi, Addl. Advocate General Sindh.

Muhammad Karim Khan Agha, J. Applicant Sajjad Ahmed has filed this Civil Revision Application under Section 115 of CPC, which has very narrow scope, assailing the order dated 11.09.2017 and Decree dated 11.09.2017 as well as order dated 10.05.2022.

2. Brief facts of the case are that according to the plaintiff that the defendant was running his factory in the name and style of M/s. Super Pakistan Lubricants" situated at plot No.M-164, 169/A, Jehanabad Mewashah Road, Karachi and during the course of his business, defendant persuaded the plaintiff to invest his amount in his business and he would refund the principle amount alongwith profit to the plaintiff. It is also stated that defendant called the plaintiff in his factory, got visited him in the factory and showed his business, therefore, on the assurance of defendant, plaintiff gave Rs.30,00,000/- to the defendant and he assured the plaintiff to refund the amount very soon alongwith profit. When the plaintiff demanded his amount and profit, defendant gave three Post-dated cheques of different dates of principle amount to the plaintiff and requested that profit would be paid after some time as he had no arrangement at the moment. The plaintiff deposited the said cheques in his account, but all three cheques were returned by the bank with endorsement of "Fund Insufficient". It is further stated that plaintiff so many times approached to the defendant for his said amount through phone as well as well-wishers requested to defendant to refund his amount, but all request were turned down by the defendant. Lastly, it is prayed by the plaintiff as under: - ✓

- i. To direct the defendant to pay Rs.30,00,000/ (Rupees Thirty Lac) to the plaintiff.
- ii. Cost of the suit.
- iii. Any other relief(s) fit and proper in the circumstances of the case.

3. The impugned order found that the plaintiff (applicant herein) had made out his case and the suit was decreed in his favour in the amount of Rs.30,00,000/- (Thirty Lacs) from the defendants.

4. This judgment was appealed vide order dated 10.05.2022 which dismissed on appeal on the basis that it was time barred.

5. Learned counsel for the applicant obtained a stay order over two years ago and since that time his appearances have been sketchy and on number of occasions a brief was held on his behalf. Today once again counsel holding brief states that the learned counsel for the Applicant Mr. Farjad Ali Khan has gone to perform Umrah, however, no general adjournment has been filed on his behalf. It appears from the order sheets that the applicant has deliberately dragging on this matter. He has a stay operating in his favor which prejudices the right of the respondent and benefits himself.

6. I have gone through the record with the assistance of learned counsel for the respondent and Addl. Advocate General Sindh.

7. Appeal / order dated 10.05.2022 was dismissed by the Addl. District & Sessions Judge (South) Karachi on the basis that it was time barred as set out in para-5 of the order which is reproduced herein below:-

"I have given careful consideration to the submissions made by both the sides and perused the material available on record. Admittedly, this suit was decreed against the defendant/J.D. vide judgment and decree dated 11.09.2017, which attained finality, as the defendant/JD did not challenge it before any higher forum. It is for first time that defendant/JD filed instant application under section 12(2) CPC, on 18.01.2022, without offering any explanation for the inordinate delay in the filing of such application after more than four years and three months and so also without mentioning the date of knowledge. The period of Limitation for filing an application u/s.12(2) CPC is governed by Article 181 of the Limitation Act which provided maximum time frame of three years to challenge the validity of a judgment and decree on the plea of fraud, misrepresentation or want of jurisdiction."

8. Application / appeal had to be filed within a period of 03 years from the date of the judgment, however, it was filed after a period of 04 years and 03 months with a delay of one year and 03 months from passing of impugned judgment dated 11.09.2017. Under Article 18 of the Limitation Act which applies to the appeal in question and in general each and every day of delay in filing the appeal must be explained. In this case period of 01 years and 03 months has gone completely unexplained.

9. Thus this Civil Revision Application which in any event has a very narrow scope is hopelessly time barred. It has been held in **2023 SCMR 291** wherein August Supreme Court of Pakistan has held that *"law of limitation reduces an effect of extinguishment of a right of a party when significant lapses occur - When no sufficient cause for such lapse, delay or time barred action is shown by the defaulting party, the opposite party is entitled to a right accrued by such lapses---Omission and negligence of not filing the proceedings within the prescribe limitation period creates a right in favour of the opposite party."*

10. Keeping in view the above, the instant petition is hereby dismissed as being hopelessly time barred alongwith all listed applications.