HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Civil Revision Application No.S-52 of 2024

Applicant By:	Mr. Muhammad Aslam, Advocate.
Private Respondents By:	Mr. Ghulam Nabi Meo, Advocate.
Official Respondents By:	Mr. Muhammad Shareef Solangi, A.A.G Sindh.
Date of Hearing:	06.04.2026.
Date of Order:	06.04.2026.

O R D E R

Muhammad Jaffer Raza, J*:* Through the instant Civil Revision Application, the applicant has impugned the Order dated 18.01.2024 passed in Civil Appeal No.13/2024 by learned Additional District Judge-I, Mirpurkhas.

2. The brief facts of the case are that earlier civil suit No.141/1999 was filed by the respondents No.1 to 10 and the applicant was impleaded as defendant No.18 and after recording evidence, Judgment dated 28.02.2007 and decree dated 07.03.2007 was passed against which an application under section 12(2) C.P.C was filed on 03.04.2007. Suffice to say that after a prolonged period, the said application filed under section 12(2) C.P.C was dismissed after framing of issues and recording evidence of the respective parties. The details of the noted dismissal are aptly reflected in the judgment of this Court passed in C.P No.D-771/2012, and need no reiteration.

3. Learned counsel for the applicant states that the impugned order is liable to be set-aside as he had approached the wrong forum, and an application under section 12(2) C.P.C was preferred as opposed to an appeal under section 96 C.P.C which ought to have been filed by him. He further argued that negligence of the counsel is a sufficient ground for condonation of delay and he may be allowed to proceed with the appeal on merits. He has placed reliance on the Judgment rendered by Hon'ble Supreme Court of Pakistan in the case of **Khushi**

<u>Muhammad</u>[1] and states that on the principles of law enunciated by Hon'ble Supreme Court of Pakistan in the noted Judgment, the instant Civil Revision Application ought to be allowed.

4. Learned counsel for the private respondents states that there is significant delay in filing of the appeal and same under circumstances cannot be condoned. He invited my attention to the Order of this Court made in C.P No.D-771/2012 and more particularly to paragraph No.11 in which Divisional Bench has observed that evidence was duly recorded in application preferred by the applicant under section 12(2) C.P.C and subsequently dismissed. He has also placed reliance on the Judgment in the case of **<u>Khushi Muhammad</u>** (Supra) and argued that under the dicta of the law enunciated in the noted Judgment, no ground of condonation has been made out under sections 5 and 14 of the Limitation Act, 1908 **"(Act)".**

5. I have heard learned counsel for the parties and perused the record with their able assistance.

6. It is apparent that impugned Judgment and decree were rendered on 28.02.2007 and 07.03.2007 respectively. The applicant had received certified true copy of the impugned judgment and decree on 26.03.2007 and filed application under section 12(2) C.P.C on 03.04.2007. Record further reflects that after dismissal of the above noted C.P No.D-771/2012 on 06.12.2023, the applicant preferred above noted appeal on 21.12.2023 after a delay of 16 years, 09 months and 14 days. With the assistance of learned counsels, I have perused the Judgment rendered by Hon'ble Supreme Court of Pakistan in the case of **<u>Khushi Muhammad</u>** (Supra), the relevant portion thereof is reproduced as under:-

> <u>"Thus from a plain reading there is no ambiguity that Section 14 is exclusively and solely restricted to suits and suits alone</u>. If it is taken to apply to appeals also, this would be tantamount to reading into the section the word "appeal" which does not appear in the said section and such a reading would be contrary to the definition of the word "suit" in the statute. It is not permissible in law to defeat the express provisions of law by resorting to any rule of interpretation

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[1] Khushi Muhammad through L.Rs and others Vs. Mst. Fazal Bibi and others reported in PLD 2016 Supreme Court 872

which would have the convoluted effect of rendering an appeal a continuation of the suit for the purposes of attracting the application of Section 14. Besides, as per the rule of casus omissus, the courts are not entitled to read words into an Act of Parliament unless clear reasons for it are found within the four corners of the Act itself. In the instant case we do not find any such reasons. It may be pertinent to state here that while referring to Section 2(10) ibid it was held in the judgment of this Court reported as Dr. Syed Sibtain Raza Naqvi (supra), that:-

> "11. On reading Section 14 of the Act along with section 2(1), it appears that legislature specifically excluded the appeal or an application from the purview of "Suit". We left no doubt in our mind that benefit of section 14 of the Act cannot be extended to exclude the time consumed in prosecuting an appeal before wrong forum having no jurisdiction, for the purposes of filing an appeal before a forum having jurisdiction."

This is an apt expression of law and the judgments of this Court which provide to the contrary (that the provisions of Section 14 are applicable to appeals) are per incuriam because in none of those cases was Section 2(10) ibid noticed or its effect considered. Thus our candid and firm opinion is that the application of Section 14 is restricted to suits only and has no direct and independent application to cases where an appeal has been filed before a wrong forum"

(Emphasis added)

7. It is also evident from the perusal of above-noted Judgment that Section 14 of the Act applies only to suits and suits alone, and the provision of the same cannot be extended to the applicant in the given facts. The question before me now is whether under section 5 of the Act the delay can be condoned and whether negligence of the counsel constitutes sufficient cause to condone the delay. The said question also has been definitively answered in the above-noted Judgment relevant part of which is reproduced as under:-

> "Question as to whether the institution and the pendency of the appeal on the wrong advice of the counsel before a wrong forum i.e. one lacking jurisdiction constituted a sufficient cause for condonation of delay in terms of section 5 of the Limitation Act, 1908, it could neither be held that condonation was absolutely ruled out in such a situation nor that the appellant shall be entitled to condonation as a matter of course and right, rather the Court must look into the facts and circumstances of each case as to whether sufficient cause had been made out.
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> Person seeking condonation of delay must establish sufficient cause. Time spent pursuing an appeal before a wrong forum, in good faith and with due diligence ought to constitute sufficient cause for condonation of delay. But the act of approaching a wrong forum

> must be accounted for: it should be established that due to some honest, bona fide and genuine ambiguity in the law or in fact, a party or his counsel was led astray in terms of approaching a wrong forum. Mere incompetence of the counsel, inadvertence, negligence or ignorance of law attributable to him and/or overlooking of the record by the counsel could not constitute sufficient cause ipso facto, but the factor(s) which misled the legal counsel, including any ambiguity in the law, causing him to file the appeal before the wrong forum must be indicated. Mere wrong advice of counsel was not an adequate ground per se to constitute sufficient cause because if such rule was accepted, the rule that ignorance of law was no excuse would stand violated. Besides, the factors which caused ambiguity and misled the appellant (or his counsel as the case may be) had to be stated with clarity and precision in the application for condonation of delay and proved on the record.
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> Poor advice by a counsel may well cause hardship to a litigant and compromise his ability to seek redress in law. But hardship caused to a person on account of poor advice of counsel did not constitute a sufficient cause for condonation of delay per se. Courts must insist that applications for condonation of delay must specify with particularity as to what factors misled the counsel and gave him cause to form his unfortunate opinion with respect to the (wrong) forum adopted and thereafter the said factors must be proved on record. It is then for the court to decide if, on the basis of such factors, sufficient cause had been made out or not".
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> (Emphasis added)

8. It is apparent from the perusal of the above-noted enunciation of law by the Hon'ble Supreme Court of Pakistan that wrong advice of counsel is not ipso facto a ground for condonation of delay. Even otherwise, the remedy sought by the applicant under Section 12(2) C.P.C is different than an appeal under Section 96 C.P.C. It is trite law that under Section 12(2) C.P.C, the burden to establish fraud and misrepresentation is on the applicant making the application; therefore, in the instant case, it was not the case of the appeal being filed at an incorrect forum, rather it was the case of the applicant availing remedy under the law, the threshold of which he failed to.

9. In the light of what has been held by Hon'ble Supreme Court of Pakistan, the instant Civil Revision Application merits no consideration which is accordingly **dismissed** alongwith pending application.

JUDGE