

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No. 123 of 2019

Date: Order with signature of Judge

- 1. For hearing of CMA No. 1021/2025 (|Limitation)
- 2. For hearing of CMA No. 1022/2025 (|Restoration)

25.09.2026

Syed Shaheer-ul-Islam Shahid, Advocate for the Appellant.
Mr. Muhammad Mushtaq, Advocate for Respondent No. 1.

ORDER

SAMAN RAFAT IMTIAZ, J.- By this Order, I intend to dispose of CMA No.1021 of 2025 [an application under Section 5 of the Limitation Act, 1908 read with Section 151 CPC] and CMA No.1022 of 2025 [an application under Order XLI, Rule 19, read with Section 151, CPC for recalling the order dated 07.11.2024], filed by the Appellants [Zafar Abbas Bhatti and Faiza Batool].

2. The background of the litigation, in brief, is that Respondent No.1 [Tayyab Hussain Bhatti] filed Civil Suit No.126 of 2014 before the learned VIIth Senior Civil Judge East Karachi for cancellation of transaction, declaration, possession and permanent injunction in respect of House No. A-84, Kehkishan Society, Malir Halt, Karachi. As stated in the memo of appeal, the suit was disposed of under Order XVII, Rule 3 CPC by judgment and decree dated 10.11.2018. The Appellants filed Civil Appeal No. 03 of 2019, which was dismissed by the learned IIIrd Additional District Judge, Karachi (East) by judgment and decree dated 15.05.2019. The Appellants then filed the instant Second Appeal against those judgments and decrees. This Second Appeal was dismissed for non-prosecution vide order dated 07.11.2024.

3. According to the affidavit filed with CMA No. 1022 of 2025, the appeal was adjourned on 07.10.2024 to a date in office to be fixed after four weeks. No fixed date was given by the Court and the counsel for the Appellants was on general adjournment on 07.11.2024, yet the appeal was fixed by the office on that date and dismissed. The Appellants say that the order is void and that no limitation runs against a void order. In CMA No.1021 of 2025 the Appellants state that they came to know about the order on 10.01.2025 and that the delay in filing the application for re-admission was not intentional nor wilful.

4. The learned counsel for the Appellants submitted a general adjournment list, which shows that the counsel was on general adjournment from 04.11.2024 till 08.11.2024 except in date-by-Court and/or cases wherein interim orders are operating. He submitted that in the instant case, there was no interim order operating nor was the matter fixed on the date of dismissal as a date-by-Court. He therefore submitted that the dismissal order was void, against which no limitation will run.

5. On the other hand, the learned counsel for the Respondent No. 1 strongly objected to the same and submitted that no cogent reason has been given in the condonation application to justify the delay of 62 days in filing of the restoration application and as such, the condonation is liable to be dismissed and consequently the restoration application as well, since valuable rights accrued upon the other side upon expiry of limitation period. He relied upon the cases of *Zahid Ahmed v. Deputy Director Adjudication and others*, PLD 2006 Karachi 252; *Syed Junaid Akhtar and others v. Managing Director/Chairman and others*, PLD 2008 SC 130; *Defence Housing Authority through Secretary v. Lubna Nizami and another*, 2021 CLC 1034; *Mst. Halima Tahir and others v. Mst. Naheed Ejaz and others*, 2010 MLD 554; *Alamzaib v. Province of Sindh through Secretary and others*, 2020 CLC 384; *Rex Talkies (Pvt) Ltd. and another v. Sami Oosman and others*, SBLR 2007 Sindh 915; and *Muhammad Faisal v. Commissioner Inland Revenue, Zone-II, RTO-II, Lahore*, 2025 SCMR 930.

6. Heard the learned counsels for the parties and perused the entire record with their assistance.

7. Perusal of the diary sheet in the matter shows that the appeal was instituted on 05.08.2019 and was taken up for the first time on 21.08.2019, when notices were ordered to be issued. On 05.09.2019, counsel for the Appellants was reported to be indisposed. On the next date, matter was adjourned to allow Respondent No. 1 further time to engage counsel. None was present for either side on 05.08.2020, while on 05.10.2020, request for adjournment was made on behalf of the counsel for the Appellants. On 25.09.2024, again none was present for the Appellants, when as an indulgence, matter was adjourned to 07.10.2024. On the next date, the present counsel for the Appellant undertook to file his power. Thereafter, the matter was adjourned for a date after four weeks. The matter was fixed exactly after four weeks on 07.11.2024, when none appeared on behalf of the Appellants and the second appeal was dismissed for non-prosecution.

8. In view of the foregoing, I am not convinced that it was not a date-by-Court matter. The Court had granted four weeks' adjournment to the

Appellants' counsel in his presence therefore, the Appellants were well aware that the matter would be fixed after four weeks. The matter was neither fixed earlier than four weeks nor later. Therefore, in my opinion, they cannot claim that the matter did not fall within the exceptions of their counsel's general adjournment.

9. Even otherwise, for the sake of argument, there is no substance in the argument that limitation does not run against a void order. It is well settled by the Supreme Court now that even in case of a void order, the party must approach the Court within time¹. In the facts and circumstances of the instant case, it is reiterated that four weeks' time was granted to the Appellants by this Court on 07.10.2024 in presence of their counsel. Therefore, they were obliged to inquire and follow up with the matter. No reason whatsoever has been given to explain why the Appellants failed to follow up with the matter after four weeks from 07.10.2024, when such period expired one day before the end of the counsel's general adjournment. A prudent person would have immediately upon return from general adjournment checked to inquire about the next date as four weeks had already expired. But knowing that four weeks expired in November 2024, there appears to be no justifiable reason why the matter was not followed up till January 2025, nor has the Appellants disclosed as to how it came to know about the impugned order on 10.01.2025. In such circumstances, the delay cannot be condoned, as it is settled law that upon expiry of limitation, valuable rights accrue to the other side, and therefore, delay cannot be condoned casually or lightly.

10. In view of the above, CMA No.1021 of 2025 [an application under Section 5 of the Limitation Act, 1908 read with Section 151 CPC] is dismissed and consequently, CMA No.1022 of 2025 [an application under Order XLI Rule 19 read with Section 151 CPC for recalling the order dated 07.11.2024], is also dismissed.

J U D G E

Imran

¹ *Kirammat Khan v. I.G Frontier Corps*, 2023 SCMR 866 and *Sindh Irrigation and Drainage Authority v. Province of Sindh*, 2026 SCMR 190