

IN THE HIGH COURT OF SINDH AT KARACHI

Miscellaneous Appeal No.63 of 2023

Date	Order with Signature of Judge
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Appellant: through Mr. Muhammad Ilyas Warraich Advocate

Respondent through Mr. Muhammad Imran Ameer Advocate

Date of Hearing: 19.08.2026

Date of Judgment: 08.09.2026

JUDGMENT

Saman Rafat Imtiaz; J: This Miscellaneous Appeal has been preferred by the Appellant against the Judgment and Decree dated 20.09.2021 (**“Impugned Judgment and Decree”**) passed by the learned District Judge/Gas Utility Court, Karachi, East (**“Gas Utility Court”**) dismissing Suit No.13 of 2012 for recovery filed by the Appellant as not maintainable being hit by Article 61 of the Limitation Act, 1908. The Appellant has prayed that this Honorable Court may set aside the impugned Judgment and Decree, and decree the suit of the Appellant as prayed for.

2. The learned counsel for the Appellant submitted that the learned Gas Utility Court has dismissed the Suit for recovery filed by the Appellant only on the point of limitation and has erred in concluding that the suit was time barred on the touchstone of Article 61 of the Limitation Act, 1908 by failing to consider Section 20 of the Gas (Theft Control & Recovery) Act, 2016 (**“Gas Theft Act”**), whereby it is expressly stipulated that no time bar shall apply in respect of granting compensation or ordering recovery of arrears of any dues or initiating proceedings in this regard. He has relied upon Section 31 of the Gas Theft Act, which provides for overriding effect of its provisions. The learned counsel for the Appellant submitted that in fact the Suit was filed in 2012 before Senior Civil Judge, which was transferred to the Gas Utility Court by virtue of Section 5(7) of the Gas Theft Act. He has referred to the relevant contents of the plaint, whereby it was alleged that the Respondent's meter reading was found reversed, hence the claim for recovery of amounts. The learned counsel for the Appellant relied upon an unreported judgment dated 04 09 2025 passed by the Lahore High Court in Writ Petition No. 46461/2025 (Muhammad Ashraf vs. Sui Northern Gas Pipe Limited Company and another), whereby it was held that no time frame shall apply in respect of recovery of arrears or dues under the Gas (Theft Control & Recovery) Act, 2016 in view of Section 20 thereof.

3. On the other hand, the learned counsel for the Respondent has relied upon the judgment of this Court reported as *Sui Southern Gas Company Limited through Sub-Attorney vs. Irshad Ali Bhutto and another*, PLD 2024 Sindh 205, in which Article 181 of the Limitation Act was applied by observing that no specific period of limitation has been provided under the Gas Theft Act. The learned counsel relied upon *Pak Leather Crafts Limited Vs. Al-Baraka Bank Pakistan Limited*, 2022 CLD 1296, *Muhammad Zabir Vs. Haji Muhammad Tufail*, 2003 SCMR 1334 and unreported judgment passed on 06.04.2026 passed in Misc. Appeal No. S-15 of 2025 passed by this Court.

4. The learned counsel for the Appellant submitted that *Sui Southern Gas Company Limited through Sub-Attorney vs. Irshad Ali Bhutto and another*, PLD 2024 Sindh 205 has been challenged before the Supreme Court in which order dated 11.09.2025 was passed stating that the only question which requires determination is whether Article 181 of the Limitation Act or Section 20 of the Gas Theft Act will be attracted to the suit filed by the Appellant under the latter Act. He, therefore, submitted that the instant appeal may be adjourned sine-die.

5. On the other hand, learned counsel for the Respondent submitted that the instant appeal is time barred as it was filed on 31.03.2023 against the judgment dated 20.09.2021 and that too without filing any application for condonation of delay.

6. The learned counsel for the Appellant submitted that the application for certified copy of the Judgment and Decree dated 20.09.2021 was made within the limitation period on 23.09.2021 but fee was estimated on 13.03.2023 and as such the interim period between the two dates is to be excluded. Fee and stamp duty was deposited on 18.03.2023, whereafter copy was delivered on 25.03.2023 and the instant appeal was filed on 31.03.2023 with the effect that there was no delay hence on need to file a condonation application. He argued that the Appellant cannot be held liable for delay in estimation for fees by the office and also pointed out that the impugned Judgment on the first page states that it was passed on 20.09.2020 but at the end states it was passed on 20-09-2021, whereas, Decree is dated 20.09.2015.

7. The learned counsel for the Respondent submitted diary sheets of Suit No.13 of 2012 to establish that judgment was announced on 20-09-2021. He argued that the parties are liable to pursue the matter for obtaining certified copies themselves and as such lengthy period of one and half year for

estimation of fees cannot be excluded. He relied upon the case of *Pak Leather Crafts Limited and others vs. Al-Baraka Bank Pakistan Limited*, 2022 CLC 1296 SC and the case of *Muhammad Zabir vs. Haji Muhammad Tufail and another*, 2003 SCMR 1334. He also relied upon Order dated 06.04.2026 passed in M.A No. S-15 of 2025 by the High Court of Sindh, Circuit Court, Hyderabad. He has prayed for restoration of the Respondent's gas connection and in this regard submits that the factory was not in operation at the time of institution of the suit, and therefore claim of the Appellant is altogether fictitious, however, now the Respondent wants to resume operations which they are unable to do due to disconnection of their gas connection.

8. The learned counsel for the Appellant submits that he has no objection if the gas connection is restored subject to furnishing of security of appropriate nature.

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

Whether this appeal is time barred?

10. Section 12(2) of the Limitation Act, 1908 provides that **"in computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded"**. [Emphasis added].

11. The term "requisite" used in the aforesaid provision of law was considered by the Supreme Court in the case of *Fateh Muhammad vs. Qadir Bakhsh*, 1975 SCMR 157, wherein the Privy Council in the case of *Jijibhoy N. Surty v. T. S. Chettyar (A Firm)*, AIR 1928 PC 123 was relied upon to hold that it is a strong word; which may be regarded as meaning something more than just "required", and that it actually means "properly required" and throws upon the pleader or the counsel for the appellant the necessity to show that no part of the delay beyond the prescribed period is due to his default. But he is not responsible for the time which is taken up, *inter alia*, by the officials of the court in preparing and issuing the documents. It was further clarified that it is well settled that the time requisite for obtaining copy of order within the meaning of Section 12 means only the interval between the date of application for supply of

copy and the date when it is ready for delivery. Even during this interval, due diligence on the part of the litigant is required by law, and no delay unless such as was caused by circumstance over which he had no control and which could not by due diligence be avoided, can form part of time "requisite" for obtaining the copy. In the circumstances of the case before the Supreme Court, the copy was made ready on 13th December 1973, as such last date for filing the petition was 15th January 1974, whereas the petitioner received the copy on 25th January 1974, by which time limitation had already expired, and as such, the petition was dismissed as time-barred.

12. The Supreme Court in the case of *Jamila Khatoon vs. Tajunnisa*, PLD 1984 SC 208 emphasized that the litigant is entitled, as a matter of right, to exclude the period spent in obtaining copies and that Section 12(2) confers upon the appellant a substantive right to claim the time as excluded and the Court cannot impose upon the statutory right of any appellant any restriction not warranted by the Act. It was further held that the appellant must act with reasonable promptitude and diligence in order to satisfy the Court that the time which he claims to be excluded was properly required in obtaining copies. Another principle that the Supreme Court held must be kept in mind is that the question as to what is the time requisite for obtaining the copy must necessarily depend upon the practice and rules in force and no general principle on this question can be safely formulated.

13. The Sindh Civil Court Rules provide for Copies and Translations in Rules 319 to 336. Let us consider the relevant rules which for the said purpose are reproduced hereunder:

319. Copy not to be made without order:-- Except as provided by these rules, no copy or translations **shall be made** or permitted to be made of any record, or portion of record, of any suit or matter **unless an order granting it has been made on an application.**

320. Contents of application: -- Every application for a copy or translation of any record of any portion of the record of a suit or matter shall be entitled in such suit or matter and shall set out a description of the particular document of which copy or translation is required and the full postal address of the applicant if he desires it to be sent to him by post. The application shall be signed by the applicant or his pleader and may be presented in person or sent by post to the Court having the custody of the record.

Provided that an application under the next succeeding rule shall be presented personally.

322. Who may grant copies or translations and of what records:--

(1) No copy shall be made of any official document except under the order in writing of the judge.

(2) No copy shall be granted in any case of notes of arguments recorded by a Judge.

(3) When a copy of a copy is granted, it shall be endorsed thereon that it has been copied from a copy.

(4) Subject to the provisions of sub-rules (1) to (3) a copy of translation shall be granted, as of course, by the chief ministerial officer to a party to a suit or matter of any record or any portion of any record of such suit or matter, whether decided or pending, except in such case as the Judge may otherwise direct.

323. Registration of application and estimate of copying and other fees:--

(1) As soon as an order for a copy or translation has been made, the Record Keeper or under his supervision the Head Copyist, shall number and register the application in the order of its receipt in the Register of Application for copies and translations and shall enter on the application its serial number. He shall also at once, if possible, or during the same day but ordinarily not later than the following working day, ascertain the amount of copying, comparing and translation fees, when leviable, according to the scale prescribed in Chapter VIII, Appendix D and enter them on the application and communicate them to the applicant.

(2) No fees shall be charged for copying papers wanted for a public purpose by officers other than the Advocate General or the Government Pleaders of a Provincial Government or the Central Government or of the Government of Burma.

(3) The preparation of copies shall be undertaken in accordance with the serial order of applications unless otherwise ordered by the Judge.

Provided that on payment of an extra fee of four annas by a Court fee stamp upon the application and on extra payment of half the copying fees and comparing fees, if any, an applicant should be entitled to obtain a copy, if possible, within 24 hours and in any case within 48 hours, of any document among the records of the Court to which the application is made.

324. Preparation of copies not commenced until prescribed fees deposited.

(1) No copy or translation shall be commenced until the estimated amount of the copying and comparing fees and, as the case may be, translation fee, when leviable, have been deposited with the Record Keeper.

Provided that the Judge may sanction the preparation of copies or translations costs of which are to be recovered by value payable post.

(2) If the estimated amount of fees and, in the case of a certified copy, also the requisite stamp is not deposited within seven days from the date of the communication under sub-rule (1) of rule 323 to the applicant, the application shall be rejected and note to that effect made in column No. 24 of the Register of Applications for Copies and Translations. [Emphasis added].

14. As can be seen from the above reproduction, the said rules envisage filing of an application for copy of any record or portion thereof of any suit or matter and no such copy can be made without making of an order granting

such application, in writing, by the Judge. As soon as such order for a copy is made, the application shall be numbered and registered in the order of its receipt in the relevant register and the amount of copying shall also be ascertained at once, if possible, or during the same day but ordinarily not later than the following working day and communicate them to the applicant. Once the estimated cost is communicated, it must be deposited within seven days failing which the application shall be rejected.

15. The Supreme Court in *Jamila Khatoon (Supra)* explained that communication of the amount of copying fee pursuant to Rule 323(1) is necessary because it is a variable factor depending on the length of judgment or order. Once the estimated cost is communicated to the applicant, he is required to deposit the same within 7 days from the date of communication pursuant to Rule 324(3). However, the delay in *Jamila Khatoon* was for the appellant's failure to deposit the stamps without sufficient cause which was therefore held not to be time requisite for obtaining copies, as such was not excluded.

16. This Court in *Safdari Begum vs. Amir Ali Tabrezi*, 1985 CLC 836 also held that the party cannot be penalized for the negligence or non-performance of duty by the court officers. *Ubaidur Raza Khan vs. Saghera Bano*, 1994 CLC 1302 is a case in point wherein the application for obtaining copy was made on the same day as the announcement of judgment but thereafter the appellant slept over the matter from 4-9-1991 till 13-10-1991 when the costs were estimated. In such facts, it was observed that although it is true that if the appellant had pursued the matter, costs could have been estimated earlier, nevertheless the law does not require a party to pursue the matter in the copying agency. Therefore, it was held that the appellant was under no obligation to pursue the matter with it and that it was the duty of the copying agency to issue notice to the person applying for the certified copy to intimate that costs had been estimated. And as such, the appeal was held to be within time. In the case of *Arshad Naseemuddin Ahmed vs. Javed Baloch*, 2012 CLC 1293, where the application was made on 19-11-2009 and cost was estimated on 25-01-2010 this Court yet once again held that the appellant has no role to play in estimation of cost and it is in the sole discretion and powers of the concerned officer/copyist who estimated the cost which was paid promptly.

17. As explained in *Fateh Muhammad (Supra)* the time requisite for obtaining copy of order within the meaning of Section 12 means only the

interval between the date of application for supply of copy and the date when it is ready for delivery. But such interval comprises of various steps required to be taken by the office and by the applicant during which the onus shifts back and forth between the applicant and the court officials. The grant of the application and estimation of cost is not in the control of the applicant but once cost is estimated and communicated the onus falls back upon the applicant to deposit such cost within the stipulated time for which he must exercise due diligence. Any delay or negligence in this regard does not constitute “requisite time” within the meaning of Section 12(2) of the Limitation Act, 1908. Upon such deposit, ‘the ball comes back in the court’ of the officials, so to speak, only to shift back to the applicant when the copies are made ready for delivery. In short, while the applicant cannot be penalized for the time taken by the office which must be excluded as a matter of right, the time taken by the applicant during such interval for necessary action cannot be excluded as ‘requisite time’.

18. In the instant case, the application for certified copy was made within three days of passing of the impugned Judgment and Decree; fee was paid by the Appellant within five days of communication thereof; and appeal was filed within six days of when copy was delivered, which aggregates to 14 days whereas the period of limitation was thirty days. In light of the foregoing caselaw, it is evident that although the cost may have been estimated earlier had the Appellant followed up with the office, since the law does not obligate him to do so he cannot be penalized for the delay caused by court officials and therefore his substantive right to exclude the time period under Section 12(2) of the Limitation Act, 1908 cannot be curtailed by the Court. Consequently, the time taken between the application for certified copy and communication of the estimated cost has to be excluded by virtue of Section 12(2) of the Limitation Act, 1908. Resultantly, this appeal cannot be treated as time barred.

Whether the Suit of the Appellant was time barred?

19. Perusal of the Impugned Judgment shows that the learned Gas Utility Court framed ten issues of which the first was whether the suit is maintainable. The learned Gas Utility Court dismissed the suit as not maintainable on account of being time barred under Article 61 of the Limitation Act which provides three years from when the money is paid. Since the suit was held not maintainable, the learned Gas Utility Court held that there is no need to discuss the remaining issues.

20. It is relevant to note, at the outset, that the suit was filed by the Appellant in the year 2012 which was before the promulgation of the Gas Theft Act. Therefore, limitation has to be computed under the law in effect at the time when the suit was initially filed with the result that the Appellant cannot take the benefit, if any, under Section 20 of the Gas Utility Court nor can it escape the provisions of the Limitation Act, 1908 by invoking Section 29 thereof by virtue of the fact that the Gas Theft Act is a special Act.

21. Having said that the learned Gas Utility Court has erred in applying Article 61 of the Limitation Act which governs a suit for money payable to the plaintiff for money paid for the defendant. The claim of the Appellant for recovery of money in this case is not for money paid for the Respondent. Rather the amount claimed is the value of gas consumed by the Respondent by allegedly tampering the gas meter, and arrears. No limitation period is provided elsewhere in the schedule to the Limitation Act, 1908 for such a claim, as such the suit would be governed under Article 120, which provides six years limitation from when the right to sue accrues. Since the right to sue allegedly accrued to the Appellant on 02-09-2008 when meter testing was carried out that led to the discovery of tampering, the suit filed on 04-01-2012 was within time.

22. Before parting with the judgment, it is necessary to note that the time taken for estimation of cost in the instant case is almost 18 months which is an inordinately long period of time given that the applicable rules require such estimation to be made at once, if possible, or during the same day when the order for copy has been made but ordinarily not later than the following day. Such delay can therefore not be ignored and must be inquired into for action to be taken, if warranted. The notes to Rules 322 and 323 of the Sindh Civil Court Rules are contained in Appendix A, which are reproduced as follows:

RULE 322(1).

Note. – *In making an order granting copies of official documents, the Judge shall be guided by the instructions contained in the Bombay Government Resolution, No. 7080/3, dated 15th November 1935, with respect to procedure to be followed regarding production of official documents in Courts.*

RULE 323(1).

Note. – *Surprise visits may be paid by a Judge to the Record Room to see that the rule strictly followed.*

23. In view of the foregoing discussion, the instant appeal is allowed; the impugned judgment is set aside and the matter is remanded to the learned Gas Utility Court for decision on merits after affording the parties an opportunity to submit their arguments on the remaining issues. The MIT-I of this Court is directed to call for the relevant record from the Court of the District Judge/Gas Utility Court, Karachi, East including the Appellant's application for certified copy; order granting the same; relevant excerpt of the Register of Applications for copies and transactions, etc., and to conduct an inquiry and take departmental action, if found necessary and to submit a report for perusal in chambers.

[SAMAN RAFAT IMTIAZ]
JUDGE

Announced in open Court on 8th of September, 2026.

J U D G E