

ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Second Appeal No. S-63 of 2024

Mukhtiar Bibi and others

...Appellants

Versus

Syed Qurban Ali Shah and others

...Respondents

For the Appellants : Mr. Pervaiz Akhtar Talpur, Advocate
along with Appellants

For the Respondents
Nos. 1 and 2 : Mr. Ikhlaque Ahmed Laghari and Mr.
Chaudhry Muhammad Zaman,
Advocates

For the Respondents
Nos. 3 to 5 : Mr. Harish Chander, Asst. Advocate
General Sindh

Date of Hearing : 05.10.2026

Date of Order : 05.10.2026

ORDER

Muhammad Humayon Khan, J.: The Appellants had filed First Class Suit No. 124 of 2017 which was dismissed by the learned Senior Civil Judge-III, Mirpurkhas, by Judgment dated 17.04.2019 and Decree dated 23.04.2019. Against the said Judgment and Decree, the Appellants filed First Appeal No. 30 of 2022 before the learned District Judge, Mirpurkhas. The appeal was delayed by about twenty-five days and so an application under s. 5 of the Limitation Act, 1908 was filed by the Appellants. In their application, they stated the following ground (p. 111 of the case file; para 3):

“3. That most of the appellants are out of country hence for filing the instant appeal their consent was required and in obtaining their consent the time for filing appeal has been lapsed and due to this reason accompanying appeal is being filed after expiry of time for filing appeal.”

On 10.03.2022, the learned District Judge dismissed the application under s. 5 of the Limitation Act by an order that has been impugned in this appeal under s. 100 of the CPC. The appeal was taken up on a number of dates and lastly it was heard by me on 05.10.2026 when I heard Mr. Pervaiz Akhtar Talpur for the Appellants, Mr. Ikhtlaque Ahmed Laghari and Chaudhry Muhammad Zaman for the Respondents Nos. 1 and 2 and Mr. Harish Chander, the learned Assistant Advocate General Sindh.

2. During the hearing of the case, the Appellants personally appeared and it was stated before the Court that they are foreign residents and being conservative ladies they have communication gap with their counsel and as such it took time to obtain consent of all the Appellants for filing of the appeals. Even though it is contended that no passports or proof of foreign residence is provided, the substantive aspect that they are pardanashin ladies and foreign residents has not been directly confronted. In **Mst. Farah Naz v Judge Family Court, Sahiwal and others (PLD 2006 SC 457)**, there was an appeal before the Supreme Court in family proceedings which had been delayed by the Appellant, Mst. Farah Naz, by about 27 days and the Hon'ble Supreme Court while considering the factum of the Appellant being a pardanashin and conserving woman condoned the delay of 27 days. In **Nazar Muhammad and another v Mst. Shahzada Begum and another (PLD 1974 SC 22)** a pardanashin lady had instituted a case beyond the limitation period on incorrect advice of her lawyer and the Hon'ble Supreme Court condoned the delay while holding that the delay was not intentional on the part of the conservative litigant.

3. I am not unmindful that the status or nature of a litigant is not, standing alone, a sufficient aspect for condonation of delay

because limitation is mandatory in nature and to be strictly construed. However, the Court should look at the surrounding circumstances of the matter in considering an application under s. 5 of the Limitation Act, and, in my view, the present case was one where the concession should have been granted.

4. For these reasons, I had by means of my short-order dated 05.10.2026 allowed this appeal and remanded the case back to the learned District Judge for hearing and disposing of the appeals on merit. He is directed to dispose of the same within one month from today under intimation to this Court.

JUDGE

FAISAL