

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI
Civil Revision Application No.127 of 2021

Date	Order with Signature of Judge
Applicant:	through Mr. Kashif Hanif Advocate a/w M/s. Atif Hanif Kashmiri and Waqar Ahmed Advocates
Respondent No.1:	through Mr. Malik Wasim Iqbal Advocate
Respondents No.2-8:	None present
Respondent No.9:	through Mr. Asadullah Soomro Advocate
Respondents No.10-14:	None present
Respondent No.15:	through Ms. Heer Memon, AAG Sindh
Intervenor:	through M/s. Umair Usman, Shahmeer Memon and Yahya Mazhar Advocates
Date of Hearing:	<u>27.08.2026</u>
Date of Judgment:	<u>08.09.2026</u>

JUDGMENT

Saman Rafat Imtiaz; J: This Civil Revision Application has been filed by the applicant against the judgment dated 02.08.2021 and decree dated 09.08.2021 (**“Impugned Judgment and Decree ”**) passed by the learned Model Appellate Court (MCAT)/District Judge, Malir, Karachi (**“Appellate Court”**) allowing the Civil Appeal No.19 of 2021 filed by the Respondent No. 1 against the judgment dated 09.10.2020 passed in Civil Suit No.384 of 2016 by the learned IVth Senior Civil Judge, Malir, Karachi (**“Trial Court”**) dismissing the suit of the Respondents No. 1 to 11.

2. Briefly stated, the facts of the case, as per the memo of revision application, are that the Respondent No.1 [Sindh Government Employee Cooperative Society Limited] filed Suit No.1123/1992 for Permanent Injunction before the learned Trial Court in the year 1992 which was subsequently transferred and renumbered as Suit No.256/1997, stating therein that the Respondent No.1 is a registered cooperative housing society duly registered under the Societies Act, 1925 in the year 1970. Since the formation of society, it started providing plots to its members for residential and commercial purposes under the name and style of *Gulshan-e-Mehran Society*. It is further submitted that the society acquired lands from various private owners in various Dehs i.e. Deh Dozan, Deh Thomang, Tapo Gadap, Deh Tando, Tapo Songal, Karachi

and purchased survey Nos.30, 32, 33, 34, 35, 36, 53, 54, 55, 56, 58, 40, 41, 42, 43, 44, 45, 59, 39 and 37 in Deh Thado and Survey Nos.4 & 5 in Deh Dozan, with total area of 268.35 acres. It was further claimed that subsequently in the year 1983 all such survey lands were exchanged by the Respondent No.1/Plaintiff society with the Respondent No.12/Defendant No.1 [Federation of Pakistan] against Na-Class No.01, 21, 103, 111 on payment of cost to the Government of Sindh of about Rs.34,800,000/- as exchange rate and thereafter mutation of land was made in favor of the Respondent No.1/Plaintiff society through form VII vide letter dated 17.02.1991 regarding clearance of title. Approval in this regard had also been recorded by the Cantonment Board, Malir on 12.07.1995, all Na-Class land mentioned above was also transferred by Government of Sindh in favor of Respondent No.1/Plaintiff through form VII, hence, the Respondent No.1 /Plaintiff became the exclusive owner of the subject land and the layout plan was approved by the Cantonment Board, Malir and allotments were given to its members for 99 years on payment and thereafter lease was granted to them before concerned sub-registrar. It was alleged that in the beginning of the month of August 1992, the Applicant/Defendant No.4 [The Base Commander] deployed its subordinate staff to pay casual visits to the society land in sector 3 Gulshan-e-Mehran and to prevent the construction development work of the plaintiff. The construction work of several allottees was also disturbed by Applicant/Defendant No.4 and since the allottees had taken bank loans for purchase of plots and thereafter construction of houses these acts on the part of the Applicant/Defendant No.4 were illegal and unlawful and created hardships for the Respondent No. 1 Plaintiff and in the year 1992 a civil suit bearing No.1123/1992 was filed by the Respondent No.1 which was decreed in favor of society vide judgment dated 17.09.2004.

3. That subsequently a Civil Appeal No.40/2004 was filed by the Applicant which was dismissed and thereafter a Civil Revision No. 29 of 2016 was preferred before this Court which was also dismissed; however, the Honorable Supreme Court of Pakistan was pleased to allow the Civil Appeal No. 1274/2009 and set-aside all the impugned judgments.

4. That the suit was renumbered as 384/2016. After the order of the Honorable Supreme Court fresh summons were issued to the Applicant as well as Respondents No. 12 to 14 and they filed their respective written statements and prayed for the dismissal of the suit. The Trial Court framed the issues. After hearing the parties, the learned Trial Court was pleased to dismiss the suit

under Order 17, Rule 3, CPC vide Judgment dated 09.10.2020 and opining that the relief prayed for cannot be granted in terms of Section 42 & 56(d) of Specific Relief Act and accordingly, dismissed the suit. The decree was drawn on 09.10.2020 and as per knowledge of the applicant no appeal was filed, hence, judgment dated 09.10.2020 attained finality. Subsequently the Applicant came know about the passing of the impugned Judgment on 02.08.2021 through social media and it was revealed that Respondent No.1 had filed an appeal without making the Applicant or the Respondents No. 2 to 11 party to the Civil Appeal.

5. It is further stated in the memo of revision that the record also depicts that the appeal was presented on 10.02.2021 before the learned Appellate Court to impugn the judgment and decree dated 09.10.2020 alongwith an application under Section 5 of the Limitation Act for condonation of delay of 125 days in filing of appeal. The learned Appellate Court without adhering to the provisions of Order XLI, Rule 20, CPC admitted the civil appeal and subsequently without notice to the Applicant the appeal was allowed and Judgment dated 09.10.2020 was set aside and matter was remanded to the learned Trial Court to decide the dispute after recording of evidence on merits, hence the instant civil revision.

6. At the very outset, the learned counsel for the Respondent No.1 has objected to the maintainability of the instant revision by pointing out that it has been filed in violation of Section 79, CPC, which as per the case of *Province of Punjab through Secretary, Excise & Taxation Department, Lahore and others vs. Murree Brewery Company Limited (MBCL) and another*, 2021 SCMR 305 is mandatory. The learned counsel for the Respondent No.1 explained that the Applicant was impleaded as Defendant No 4 along with the Federation of Pakistan as Respondent No.1, whereas instant civil revision application has been filed by the Applicant while making Federation as the Respondent. He submits that the Applicant has no right or authority to bring forth this action in his personal capacity and as such civil revision is liable to be dismissed on the point of maintainability. He also relied upon *Inspector General of Police, Punjab, Lahore Vs. Muhammad Iqbal*, 2007 SCMR 1864 and *[Manthar and another Vs. Province of Sindh and other]*, 1996 MLD 1510.

7. The learned counsel for the Applicant argued that the present Applicant was impleaded as Defendant No.4 in the suit filed by the Respondent No. 1 therefore it cannot object to the filing of the instant revision by the Applicant. He argued that even otherwise this Court has *suo moto* powers under Section

115, CPC, which can be exercised as provided for under subsection 1 thereof in particular where there is material irregularity in the record of the subordinate Court. In this regard, he has argued that a material irregularity in the impugned Judgment is that the Respondent No.1 failed to implead in its appeal all the parties to the suit. The learned counsel pointed out that while the suit was instituted by eleven plaintiffs including the Respondent No.1, the appeal was filed against the said Judgment only by the Respondent No.1 without even impleading the remaining plaintiffs as Respondents. Similarly, he submitted that despite the fact that the Applicant was impleaded as Defendant in the suit he was not impleaded as a party in the appeal.

8. Next, he submitted that the appeal filed by the Respondent No.1 was barred by limitation. He submitted that although the presentation date is not available on the copy of the appeal on the record, however, the affidavit in support of the appeal was sworn on 10.02.2021 and as such the appeal was at least 125 days late if not more as presentation could not have been before such date. He further argued that delay is not denied as a condonation application was filed by the Respondent No.1 in which no reason has been given for the delay nor on which date or how the Applicant gained knowledge belatedly. Instead, the affidavit alleges that the Judgment and Decree passed by the Trial Court has been obtained by way of fraud and misrepresentation and want of jurisdiction in which case an application under Section 12(2), CPC should have been filed which it was not. The application further states that the Respondent No.1 was not aware that the proceedings were being conducted by the Trial Court in their absence despite the fact that they themselves were the plaintiffs. In any event counsel for the Applicant submitted that no order has been passed with regard to the condonation application nor was the limitation considered by the learned Appellate Court in its Impugned Judgment. Thus, he argued that this Court ought to exercise *suo moto* powers under Section 151, CPC notwithstanding any non-compliance of Section 79 CPC by the Applicant since such material irregularity has now been brought to the knowledge of this Court. On merits, the learned counsel for the Applicant pointed out that the suit filed by the Respondent No.1 was only for permanent injunction without seeking declaration which according to settled law is not maintainable as such which amongst other reasons was the reason why the suit of the Respondent No.1 was dismissed vide Judgment dated 09.10.2020.

9. The learned counsel for the Respondent No.1 explained that the remaining plaintiffs are allottees/members of the Respondent No.1 and no

prejudice has been caused to any party by not impleading the same in the appeal. He relied upon *District Council, Tharparkar Vs. Syed Muhammad Wali and another*, 1998 CLC 911 to argue that compliance of Order XLI, Rule 20, CPC, is not mandatory. He reiterated that the Applicant is not a necessary party as it is not a legal entity, separate and apart or independent of the Respondents No.12, 13 and 14 [Federation of Pakistan, Director, Military Land and Cantonment and Military Estate Officer; respectively] who were impleaded as the Defendants No.1, 2 and 3 respectively in the suit by the Respondent No.1. He further submitted that it is the Respondents No.13 and 14 who have proprietary rights in respect of the subject matter of the suit and the Applicant was only impleaded due to certain actions taken by him which were allegedly illegal. In this regard he also cited *Ghulam Muhammad and others Vs. Mehtab Beg and others*, 1983 SCMR 849 and *District Council, Tharparkar through Chief Executive, Mirpurkhas Vs. Syed Muhammad Wali and another*, 1998 CLC 911. He further pointed out that the Impugned Judgment notes that notices were issued and clerks of the Respondents No.12 and 14 appeared and even received copy, however, no Advocate filed power and the other Respondents have also not contested the appeal. He argued that the revisional jurisdiction is limited to a supervisory jurisdiction for purposes of correcting jurisdictional errors or material irregularities, which the Applicant has failed to show in this case and that mere disagreement with a discretionary or procedural conclusion of the Appellate Court does not amount to a jurisdictional error justifying exercise of revisional powers. He relied upon *Muhammad Yousuf Bhindi and others Vs. Messrs. A.G.E. & Sons (Pvt.) Ltd. and others*, PLD 2024 SC 864; *Khan Bahadur Khan Vs. Khan Malook Khan*, PLD 2022 482; *Misrilal Parasmal Vs. H.P. Sadasiviah and others*, AIR 1965 SC 553; *The Managing Director (MIG) Hindustan Aeronautics Ltd. and others Vs. Ajit Prasad Taraway*, AIR 1973 SC 76; *Babu Ram and others Vs. Munna Lal and others*, AIR 1927 Allahabad 358; and *Sham Mohan Lal Vs. Jai Gopal and others*, AIR 1968 Delhi 104.

10. With regarding to limitation, the learned counsel for the Respondent No.1 candidly submitted that to the extent that the affidavit supporting the condonation application alleges fraud and misrepresentation, the same is a drafting error but that the actual reason was that the Respondent No.1 had made an application for amendment of pleadings which was dismissed by the Trial Court. The Respondent No.1 filed Revision Petition No.17 of 2019. The learned counsel has submitted a statement alongwith the diary sheets of the Civil Revision which reflect that R&P was called by the Revisional court from

the Trial Court on 20.09.2019 and which was transferred back to the learned Trial Court on 11.12.2020 and received by the learned Trial Court on 21.12.2020. He argued that without the R&P the Trial Court could not have proceeded with the matter and that the Judgment passed on 09.10.2020 is, therefore, illegal and unlawful and is liable to be set aside. He also argued that since the appeal was decided in favour of the Respondent No.1 that reflects that its condonation application was impliedly allowed in exercise of the Appellate Court's lawful discretion and that a revisional court cannot interfere with a discretionary order of a subordinate court unless such exercise is arbitrary, perverse or unjudicial. In this regard, he relied upon *Ashiq Hussain Shah Vs. Province of Punjab and others*, 2003 SCMR 1840 and *Muhammad Ramzan Vs. Additional District Judge, Shujabad and others*, 2025 CLC 1737. He submitted that the Trial Court's judgment dismissing the Respondent NO. 1's suit was illegal in the absence of the R&P and even otherwise application of Order XVII, Rule 3, CPC was not warranted under the circumstances. Lastly, he submitted that no prejudice has been caused to the Applicant from the impugned Order which is a remand order.

11. Heard the counsel for the parties and perused the record.

12. The undisputed facts of the case are that the Judgment and Decree of the Trial Court dismissing the Suit No.384 of 2016 of the Respondent No. 1 was passed on 09.10.2020 whereas the appeal against the same was filed by the Respondent No. 1 before the learned Appellate Court on 10.02.2021, thereby entailing a delay of 94 days. The question that arises in this case for this Court to determine is whether the allowing of the appeal of the Respondent No. 1 by the learned Appellate Court warrants interference by this Court in exercise of revisional jurisdiction.

Scope of Revisional Jurisdiction and suo moto exercise of powers under Section 115, CPC.

13. The seminal judgment of the Supreme Court on the scope of revisional jurisdiction and exercise of *suo moto* powers that addresses all the aspects relevant to the matter at hand is *Muhammad Yousuf Bhindi (Supra)* cited by the Respondent No. 1, the relevant portion of which is reproduced herein below for ease of reference:

"13. It is well settled that under Section 115, C.P.C, the revisional court has to ruminant the jurisdictional error of the Court below; if it acted in exercise of its jurisdiction illegally or with material irregularity or committed some error of procedure which affected the ultimate

decision. **In fact, this jurisdiction is corrective and supervisory in nature to ensure safe administration of justice and in a fit case, the Court in the same provision can exercise suo motu jurisdiction to advance the cause of justice to satisfy and reassure** that the order is within its jurisdiction; the case is not one in which the Court ought to exercise jurisdiction and, in abstaining from exercising jurisdiction, **the Court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of the trial which affected the ultimate decision.**” [Emphasis added].

Whether the instant case is a fit case for suo moto exercise of revisional jurisdiction?

14. The learned counsel for the Applicant argued that the failure to address the point of limitation constitutes a material irregularity justifying interference by this Court by exercising its *suo moto* revisional powers. On the other hand, the learned counsel for the Respondent No. 1 contended that limitation was impliedly condoned by the learned Appellate Court in exercise of its discretionary powers under Section 5 of the Limitation Act, which cannot be interfered with by exercising revisional powers of this Court *suo moto* in the absence of any arbitrariness or perversity, or material irregularity. He relied upon *Ashiq Hussain Shah (Supra)*, in which the petitioner had filed a summary suit for possession against the Province of Punjab and others setting up the claim of ownership of the suit land, which was decreed ex-parte. The petitioner filed an execution application pending which the respondents filed an application for setting aside of the ex-parte decree. [The learned Trial Court without passing an express order on the application for setting aside the ex-parte order allowed the execution application. The appeal preferred by the Respondents against the order was allowed by the learned Appellate Court with the observation that disposal of two contradictory applications by a single order was not proper and remanded the matter for separate disposal of the applications. The setting side order of the Appellate Court was assailed in a Civil Revision before the High Court of Peshawar who dismissed the same through the judgment impugned before the Supreme Court. The Applicant before the Supreme Court argued that application for setting aside ex-parte decree was moved with an unexplained delay of about one year and the appeal against the order allowing the execution application was also time barred. The learned counsel appearing for the Applicant argued that no satisfactory explanation was given in the condonation application and yet the Appellate Court allowed the appeal without attending to the question of limitation. A two-member bench of the Supreme Court held as follows:

“4. The perusal of the averments of the plaint would show that prior to the filing of suit, a criminal case under section 447, P.P.C. was registered against the petitioner for illegal occupation of above land. In the suit the petitioner claimed that the Patwarkhana was situated adjacent to the land in dispute and in the written statement, the stand of the respondents was that the suit-land was owned by the Province of Punjab and was in possession of Patwarkhana as per demarcation held on 4-12-1989 and that the new building of Patwarkhana was being constructed on the land owned by the Government. **It was stated in the application for setting aside the ex parte decree that the official who was deputed to pursue the suit, neither appeared before the Court nor informed the concerned authorities that the suit was decreed ex parte. We having gone through the judgment in appeal find that the question of limitation was not dealt with as such and respondent also did not offer sufficient explanation for non-appearance in the Court but we cannot permit the taking away the Government property for the negligence of subordinate officials. The manner in which the matter was pursued by the subordinate officials would show that they did not properly watch the Government interest and the possibility of their being in league with the petitioner being not ruled out, we are not in favour of non-suiting the respondents on technical grounds and would prefer that the rights of IA parties should be determined in the property on merits, therefore, notwithstanding the disposal of appeal on merits without dealing with the question of limitation in express words, it would be deemed that there was implied condonation of delay.**” [Emphasis added].

15. Be that as it may, in a more recent judgment a three-member bench of the Supreme Court in *Khushi Muhammad and others Vs. Mst. Fazal Bibi and others*, PLD 2016 SC 872 considered whether the discretion exercised by the courts below in condoning delay can be interfered with by the higher court and held as follows with regard to the discretionary powers under Section 5 of the Limitation Act:

“40. **Discretion exercised by a court below is not open to interference by a higher court unless it has been exercised arbitrarily.** In the case of *Muhammad Bashir* (supra) this Court upheld the condonation of delay by the High Court in terms of Section 5 of the Act in the following terms:-

“On a careful consideration of the pros and cons of the controversy between the parties and in-depth consideration of the submissions advanced at the Bar, **we are firmly of the view that exercise of discretion in the case in hand does not suffer from any inherent defect of law, arbitrariness, lack of jurisdiction or acting on surmises and conjectures.** Suffice it to point out that the High Court was fully satisfied with the sufficiency of cause shown by the respondents for condonation of delay for vital and sound reasons. We are, therefore, not inclined to interfere with the exercise of discretion by the High Court, which is neither illegal nor unreasonable or against the settled norms of jurisprudence.

For these reasons, this appeal fails and is hereby dismissed.”

Similarly in the case of Province of East Pakistan (supra) this Court held:-

" ..It lies, in the discretion of the High Court to condone or not to condone the delay under section 5 of the Limitation Act. With such a discretionary order **this Court does not ordinarily interfere unless it is satisfied that the discretion has been exercised arbitrarily, whimsically or perversely or in such a manner as to divert the law into wrong channels "**

41. We find ourselves in complete agreement with such statements of law. **In the exercise of its discretionary power the court is not empowered to act upon whim and caprice: rather the discretion of the court is circumscribed by the law, recognized norms of justice, fairplay, equity, logic, rationality and reasonableness. Where the Court has passed an order in exercise of its discretion by condoning the delay, on the basis of sufficient cause which has been made out, it does not behave a superior court to interfere in the matter, however the unbridled, arbitrary and perverse exercise of discretion does not render it immune to the scrutiny and correction by the superior court; thus where no sufficient cause on record has been made out yet the discretion for the condonation of delay is exercised subjectively and whimsically it is the duty of the superior court to rectify the defect in the exercise of discretion. Such duty is duly mandated by the provisions of Section 3 of the Act."** [Emphasis added].

16. It is therefore clear that though the exercise of discretion under Section 5 of the Limitation Act, 1908 is not normally interfered with, where such discretion has been exercised arbitrarily or against the recognized norms of justice, fairplay, equity, logic, rationality and reasonableness, it cannot remain immune from interference. Even in *Ashiq Hussain Shah (Supra)*, it was submitted that the official who was deputed to pursue the suit neither appeared before the Court nor informed the concerned authorities that the suit had been decreed ex-parte. On the other hand, in the instant case, no reason, whatsoever, has been put forward to explain the delay in filing the appeal. The only reason given by the Respondent No. 1 in the condonation application is fraud and misrepresentation. However, the learned counsel for the Respondent No.1 candidly conceded that such ground is a drafting error.

17. The reason given by the learned counsel for the Respondent No.1 before this Court i.e. that R&P was not before the Trial Court is nowhere mentioned in the application for condonation nor its affidavit. Even otherwise, that does not explain the delay in filing the appeal. Not that the judgment and decree of the Trial Court has been argued to be a void order but even if it were so as observed in *Kiramat Khan Vs. IG, Frontier Corps, 2023 SCMR 866* the Supreme Court has repeatedly held that limitation runs even against a void order and an aggrieved party must approach the competent Court for redressal

of his grievance within the period of limitation provided for in law and that this principle has consistently been upheld, affirmed and reaffirmed and is not a settled law.

18. The Impugned Judgment records that the Trial Court reframed the issues on 05.07.2019 whereas the R&P of the case remained with the Revisional Court from September, 2019 to March, 2020. The learned counsel for the Respondent No.1 has placed on record through a statement dated 27.08.2026 diary sheets of Civil Revision No.17 of 2019 which reflect that the R&P was called for on 20.09.2019 and was returned in December, 2020. Nevertheless, the Impugned Judgment notes that the Advocate for the Respondent No.1 appeared before the Trial Court on 15.08.2020 which has not been disputed by the learned counsel for the Respondent No.1. The plea of the Respondent No.1 is not that the case could not proceed on 15.08.2020 for want of R&P. But even if it is assumed that that was the case, there is no order that the Trial Court passed any order adjourning the matter *sine die* till receipt of R&P. The Respondent No. 1 was obliged to enter appearance on each date of hearing, which admittedly was not done and in the meantime the suit was dismissed. But no explanation has come forward to explain why the Respondent No. 1 and other plaintiffs i.e. Respondents No. 2 to 11 stopped pursuing their suit. It may be clarified that this analysis has not been undertaken to evaluate whether the judgment and decree of the learned Trial Court dismissing the Respondent No, 1's suit under Order XVII, Rule 3, CPC was correct or not but rather in an effort to understand the delay in filing the appeal.

19. Even if the Respondent No.1 had been following up on the Civil Revision it would have come to know of the transfer of the R&P by the Civil Revisional Court to the Trial Court in December, 2020, whereupon it could have discovered that the suit had already been dismissed enabling it to file an appeal earlier but the fact that the appeal was filed on 10.02.2021 shows that the Respondent No.1 had neither bothered to pursue the suit nor its own civil revision. Indeed, the diary sheets of the Civil Revisional Court submitted by the learned counsel for the Respondent No. 1 show that the Respondent No. 1 was repeatedly called absent. Such conduct of the Respondent No.1 constitutes sheer negligence.

20. The Supreme Court in *Muhammad Anwar Vs. Essa*, PLD 2022 SC 716 clarified that limitation is not a mere technicality as valuable rights accrue in favour of the other side upon its expiry, therefore, delay cannot be condoned

casually¹. In a latest judgment reported as *Sindh Irrigation and Drainage Authority Vs. Province of Sindh*, 2026 SCMR 190 the Supreme Court has yet once again held that while considering the grounds for condonation of delay, no extraordinary clemency or compassion and/or preferential treatment may be accorded to the Government departments, autonomous bodies rather their case should be dealt with uniformly and in the same manner as cases of ordinary litigants and citizens. It has been observed that no doubt the law favours adjudication on merits but simultaneously one should not close one's eyes to another aspect of great consequence, namely that the law favours the vigilant and not the indolent and that under Section 3 of the Limitation Act, 1908 it is the inherent duty of the Court to delve into the question of limitation regardless of whether it is raised or not and further that carelessness, intentional or sluggishness, or dearth of bona fide are not reason for condonation of delay.

21. A litigant approaching the Court after expiry of limitation is required to explain each and every day's delay. The Court is liable to consider the reasons given for such delay and to decide a condonation application through a well-reasoned and speaking order. The perusal of the condonation application shows that it is devoid of any cogent reason and as such did not merit condoning. The Impugned Judgment does not reflect that the learned Appellate Court took into consideration the factor of limitation at all. In *Government of Balochistan, through Secretary, Services and General Administration Department. Vs. Khawaja Muhammad Naseer*, 2009 PLC (C.S) 513 another three-member bench of the Supreme Court held that unless the competent authority condones the delay with conscious application of mind, the question of limitation will remain open for consideration of learned Service Tribunal. There is no waiver of the question of limitation. It is bound to examine it and record its decision. The concept of implied condonation of delay does not fit into the scheme of law of limitation because an application has to be made for seeking condonation, showing sufficient cause to the satisfaction of the forum concerned. It may also be remembered that discretion has to be exercised in a just and legal manner and it cannot be exercised arbitrarily or fancifully. The vice of accepting the implied condonation of delay is that in the absence of the grounds and reasons of condonation of delay, it is not possible for the court of appeal to examine the question as to whether the delay was rightly condoned.

¹ *Ali Muhammad through legal heirs Vs. Chief Settlement Commissioner*, 2001 SCMR 1822

22. The learned Appellate Court has, therefore, seriously erred in allowing the Respondent No.1's appeal without deciding the Respondent No.1's condonation application through a reasoned order nor addressing the question of limitation in the Impugned Judgment which, in my opinion, constitutes a material irregularity in respect of which I am inclined to exercise the *suo moto* powers contained in Section 115 of the CPC.

23. Since the Respondent No. 1 failed to justify each and every day of delay in filing the appeal against the judgment and decree dated 09.10.2020 of the Trial Court, the instant revision is allowed and the impugned appellate Judgment dated 02.08.2021 is set aside and the appeal of the Respondent No.1 is dismissed as time barred.

SAMAN RAFAT IMTIAZ
JUDGE

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

Asif