

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1042 of 2017

Present:

Mr. Justice Muhammad Faisal Kamal Alam

Date of hearing : 11.09.2017

Date of order : 05.10.2017

Plaintiffs

[*Khalid Mehmood
and others*];

: Represented by Mr. Jaffar Raza,
Advocate.

Defendant No.1

[*M/s. Multi plus Corporation
Private Limited*]

Defendant No.2

[*Aamir Masood Shiekh*]

: Represented by Mr. Zeeshan Abdullah,
Advocate.

Nemo for remaining Respondents.

Case law cited by the Plaintiffs' counsel.

- 1. PLD 2003 Supreme Court Page-724**
(*Managing Director, Sui Southern Gas Company Ltd, Karachi
Versus Ghulam Abbas and others*) [***Ghulam Abbas case***]
- 2. 2007 SCMR Page-755**
(*Sh. Mehdi Hassan Versus Province of Punjab through Member,
Board of Revenue and 5 others*)
- 3. PLD 1979 Supreme Court Page-741**
(*Zulfikar Ali Bhutto Versus The State*)
- 4. 1989 SCMR Page-1008**
(*Mst. Bilqis Bibi Versus Mst. Zainab Bibi and others*)
- 5. PLD 2010 Supreme Court Page-665**
(*Mobashir Ahmed Versus The State*)
- 6. PLD 2015 Supreme Court Page-15**
(*Mst. Shahista Bibi and another Versus Superintendent, Central Jail,
Mach and 2 others*)
- 7. PLD 2005 Peshawar Page-136**
(*Mst. Kishwar Naseem Versus Hazara Hill Tract and others*)
- 8. 2003 CLC 1652 [Lahore]**
(*Muhammad Shaiq Hussain Versus Samir Manzoor Khokhar*)

9. **PLD 2005 Supreme Court Page-153**
(*Board of Governors, Area Study Centre for Africa and North America, Quaid-e-Azam, University, Islamabad and another*).
10. **1980 CLC Page-110 [SC(AJ&K)]**
(*Sarwar Khan Versus Mir Ali and 10 others*)

Case law relied upon by Respondents' counsel.

1. **2017 MLD Page1049 [Sindh].**
(*Forte Pakistan (Pvt.) Ltd Versus Azam Khan and 2 others*)
2. **PLD 2008 Supreme Court Page-462**
(*Imtiaz Ali Versus Atta Muhammad and another*)
3. **2010 SCMR Page-1049**
(*Haji Muhammad Boota and others Versus Member (Revenue) BOR and others*)
4. **2010 SCMR Page-1036**
(*Mehmood Hussain Lark and others Versus Muslim Commercial Bank Limited and others*)
5. **2017 YLR 229 [Peshawar]**
(*Raz Muhammad Versus Chief Secretary Government of Khyber Pakhtunkhwa and 5 others*)
6. **2009 SCMR Page-1022**
(*Ahmed Jan and others Versus Qazi Aziz Haq and others*)
[*Ahmed Jan case*]
7. **2016 CLC Page-1655**
(*Shabbir Ahmed Zaffar Versus Member Board of Revenue (Consolidation) and others*).

Other Precedent:

PLD 2016 Supreme Court Page-712
(*Ghulam Qadir and others Versus Sh. Abdul Wadood and others*)
[*Ghulam Qadir case*].

Under discussion:

- (1). Scope of Review under Section 114 read with Order 47, Rule 1 of CPC.
- (2). Limitation Act, 1908.

ORDER

Muhammad Faisal Kamal Alam, J: This Review Application (CMA No.11485 of 2017) has been filed on behalf of Plaintiffs, seeking review of the order dated 21.07.2017.

2. Mr. Jaffar Raza, the learned counsel for the Plaintiffs has contended that the above order sought to be reviewed suffers from serious error apparent on the face of record, particularly regarding issue of transfer of shares by Defendant No.2 [*Aamir Masood Shiekh*] in favour of Buland Iqbal and Syed Imran Haider Abidi. He elaborated his arguments by citing Clause-7 of the Articles of Association of Defendant Company; Rule 12(A) of the Companies (*General Provisions and Forms*) Rules, 1985 and Rule 16 of Pakistan Electronic Media Regulatory Authority (*PEMRA*) Rules 2009. All these provisions bar transfer of shares in a corporate entity engaged in the business of, *inter alia*, media entertainment. By invoking these provisions, the learned counsel for Plaintiffs submits that observations mentioned in the earlier order of 21.07.2017 in Paragraph-8 is erroneous, as the issue of transfer of shares, which is *sub judice* in litigation is not between the same parties, that is, Defendant No.2 [*Aamir Masood Shiekh*], Plaintiffs and the above named persons (*new members*), but the issues involved in other litigations are separate and different from one involved in the present proceeding, therefore, this issue of illegal (*purportedly*) transfer of shares in favour of the above named persons by Defendant No.2 can be dealt with in the present proceeding even at this interlocutory stage, since no evidence is required. It was further contended that in the earlier order (*sought to be reviewed*), a fresh Extra Ordinary General Meeting [*EOGM*] is to be convened, as earlier one was held to be illegal. But this entire exercise of convening EOGM would be a futile one as Electoral College for the election of directors is defective as it consists of those persons who were made members of Defendant Company in an illegal manner. Resultantly, it is bound to jeopardize the interest of Plaintiffs as members of Defendant Company.

3. The submissions of Plaintiffs' side were vehemently controverted by Mr. Zeeshan Abdullah, Advocate, who represents Defendants No.1 and 2. Gist of his arguments was that once the issue of transfer of shareholding was discussed in the previous order and conscious observation regarding the same is made, the same cannot be reviewed at this stage, as scope of review is quite limited in comparison to an appeal. His other main argument was that instant Review Application is time barred.

4. Learned counsel for Defendants has relied upon reported decisions as mentioned supra.

5. In rebuttal the Plaintiff side has filed a written synopsis containing various reported decisions, *inter alia*, relating to the significance of review Jurisdiction and condonation of delay, that is, limitation period.

6. Submissions taken into the account and record perused.

7. It has been specifically pleaded by private Defendants that requisite permission to transfer the shares in favour of above named persons were sought and as an evidence an application dated 7-7-2016 and other correspondence with Defendant SECP and PEMRA are attached with the counter affidavit, including a letter dated 03.08.2016, wherein, approval has been sought from PEMRA to transfer shares to the above named persons. Besides this, documents including the Attendance Sheet are also annexed with the counter affidavit to show that steps have been taken for electing a new Board of Directors and in this regard the Meeting dated 5-8-2017 was convened, which was also attended by few of present Plaintiffs.

8. Plaintiff counsel in his oral rebuttal has disputed the authenticity of documents whereunder requisite permission (purportedly) was sought by

Defendant No.2 to transfer part of his shareholding in favour of the afore named persons.

9. At this stage I am mindful of the fact that discussion should not be elaborated to such an extent so as to touch upon the merits of the case, which could prejudice the trial and final outcome of present suit proceeding. Main argument of Plaintiff side is that transfer of shareholding to the above-named persons is not a *sub judice* issue in other proceeding, as observed in the earlier Order of 21-7-2017; hence, the said issue can be decided in the light of the above referred Article of Association and statutory provisions and at least to this extent the Order of 21-7-2017 be corrected and reviewed. But, in view of above discussion, it is quite clear that yet this issue requires a proper trial as in his counter affidavit the Defendant No.2 has placed on record documents to substantiate his stance that permission from other Members of Defendant Company and concerned Government functionaries was sought; though authenticity of these documents is to be proved during trial, as the same has been disputed by Plaintiffs' legal team.

10. Coming to the second aspect of the case; the Order of which review is sought was of 21-7-2017, whereas, present Review Application has been filed on 12-8-2017. Under Article 162 of the Limitation Law, Review Application of the nature is to be preferred within twenty days from the date of the order sought to be reviewed. Thus present Application should have been filed by 10-8-2017; consequently, present Review has been filed after the prescribed period, but without seeking a condonation of delay through a proper application.

11. Both sides have relied upon the reported decisions as mentioned above. Crux of these judgments on the subject of scope and extent of

Review proceeding under Section 114 read with Order XLVII of CPC is that the review is not a substitute of a regular appeal and the same does not lie merely on the ground that Court on the basis of record and material available before it should have taken a different view on a particular question of fact or law. The decisions cited by Plaintiff side in support of their stance that the decision should be reviewed to prevent irremediable injustice and to forestall an illegality, are not applicable to the present case, inter alia, in view of the discussion contained in the preceding paragraphs and secondly, because the crucial issue of transfer of share is a triable issue and in view of submissions of both sides, cannot be decided merely on the basis of statutory rules. Similarly, decisions relied upon by Plaintiff for condoning the delay in filing present Review Application, are either relate to criminal appeals or handed down in cases where a bona fide error was established, whereas, in the instant case, no such defense is taken by Plaintiff for condoning the delay of couple of days. More so, by Order dated 21-7-2017, only interlocutory applications were decided and not the entire *lis*, hence, Plaintiff is not left remediless but still the present proceeding is pending.

12. The cited decision of Ahmad Jan (*supra*) is applicable here, in which the Hon'ble Supreme Court has set-aside the decision of High Court passed on review petition, as the same was filed after expiry of limitation period and without seeking condonation of delay under Section 5 of the Limitation Law. Its non-adherence cannot be overlooked or condoned as a mere technicality, as argued by Plaintiff, but the Limitation Law is a part of positive law as held in *Ghulam Qadir case (ibid)* and should be given due effect in the light of numerous dicta. When an action is filed after the prescribed period of limitation, it can prejudice rights and interest of

opponents, which right have accrued in the intervening period, hence, time barred actions cannot be termed as a mere technicality.

13. For the foregoing reasons present review Application is dismissed.

Dated: 05.10.2017

JUDGE

M.Javid.PA