

# IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A NO.181/2016

**Present: Munib Akhtar & Yousuf Ali Sayeed, JJ**

Appellant: Adam A. Muchhadda, through Mr. M. Shafi  
Muhammadi, Advocate.

Respondent: Captain (R) H. A. Rahim, in person.

Date of hearing: 02-02-2017.

Date of Judgment:

## JUDGMENT

**YOUSUF ALI SAYEED, J.** In terms of this High Court Appeal, the Appellant has assailed the Judgment and Decree in Suit No. 628 of 2012 (the “**Underlying Suit**”) - an action for recovery and damages on grounds of malicious prosecution initiated within the original civil jurisdiction of this Court.

2. It has been colorfully pleaded in the Memo of Appeal that the Impugned Judgment dated 01.03.2016 and Decree dated 14.03.2016 are “arbitrary, perverse, despotic, bad in the eyes of law” and that the same are liable to be set-aside “being null and void”, in as much as it is contended that the learned Single Judge awarded damages although the Respondent failed to substantiate his case through evidence.
3. At the time of presentation of the Appeal, the Deputy Registrar (Judl) had raised an objection as to its maintainability on the point of limitation and learned counsel for the Appellant had been put on notice as to how the Appeal was within time. In this regard it is pertinent to mention that the Appeal was filed on 24.05.2016, whilst the stamps of the Assistant Registrar (Copying) appearing on the face of the certified copies of the Impugned Judgment and Decree filed therewith reflect that such copies were applied for on 03.05.2016 and 30.05.2016 respectively.

4. In response to this objection, it had simply been submitted, which submission was reiterated before us as well, that the law of Limitation does not apply when an order is void. No application for condonation has been filed.
5. We are aware that there are numerous judicial pronouncements where it has been held that no limitation runs against a void order, which is non-existent in the eyes of law. However, it is important to consider whether in terms of the underlying principles enumerated therein, the Impugned Judgment in this case can be characterized as void or a nullity in law.
6. In furtherance of this particular contention, it has been submitted that the Suit proceeded ex parte against the Appellant as service was not properly effected pursuant to the Order for issuance of notice through all modes passed on 10.02.2015, in as much as pasting took place without attendance of witnesses and publication was effected in an Urdu language daily newspaper, whereas the Appellant reads only Gujarati/English newspapers. We have seen that in the Memo of Appeal one of the grounds taken states in a similar vein that *“the appellant is within time as the appellant was proceeded ex-parte and came to know about judgment & decree on receipt of letter dated 25.04.2016 from the respondent which was received to him (appellant) on 26.04.2016 hence this appeal.”*
7. As per our understanding of the matter, there is a clear a distinction between an illegal order and a void order, for whilst every void order would certainly be illegal, every illegal order would not necessarily be void. According to Black's Law Dictionary, the term "void" means null, ineffectual, nugatory, having no legal force or binding effect, unable in law.

8. Whilst orders passed without lawful authority, without jurisdiction, or against the principles of natural justice may be void, every order made by a competent judicial forum that suffers from some error cannot necessarily be so regarded. The distinction was explained by the Honourable Supreme Court in Muhammad Swaleh v. United Grain Fodder Agencies, PLD 1964 SC 97, with reference to the grounds of revision set out in section 115, C.P.C. Their lordships observed that when a Court or a Tribunal assumes jurisdiction not vested in it by law or fails to exercise jurisdiction so vested, its order may be void and a nullity in law. However, when it acts illegally or with material irregularity in the exercise of its jurisdiction, the ensuing order may be voidable but would not be void.

9. In the case of M/s. Conforce Ltd. v. Syed Ali Shah etc., PLD 1977 SC 599, it was stated by the Apex Court that :-----

"...we would observe that a void order or an order without jurisdiction is only a type of an illegal order passed by a Court and the fact that it has been passed and that it may, therefore, create rights cannot be altered by describing it as void or without jurisdiction. And, further, the expressions "void orders" and "orders without jurisdiction" are overworked expressions." (at Page 601 D)

10. Subsequently, in the case of Land Acquisition Collector, Nowshera & Others v. Sarfaraz Khan & Others, PLD 2001 SC 514, it was observed by the Honourable Supreme Court that:

"It is settled law that the bar of limitation would not operate in respect of void orders but not in respect of erroneous orders. The question of ' limitation may not, therefore; arise in respect of a judgment which is a nullity in law, void or ultra vires the statute or the constitution. In point of fact, if an order is without jurisdiction and void, it need not even be formally set aside as has been held in the cases of Ali Muhammad v. Hussain Bakhsh PLD 1976 SC 37 and Ch. Altaf Hussain and others v. The Chief Settlement Commissioner PLD 1965 SC 68." (at Page 517 A)

11. It is evident from the aforementioned precedents that a mere irregular, incorrect, erroneous or illegal order does not necessarily fall within conception of the term “void”, and that the law of limitation would apply to such orders.
12. In the instant case, the learned single Judge was certainly fully competent to adjudicate upon the subject matter of the Underlying Suit and to pass the impugned Judgment and Decree. No assertion to the contrary has even been made by the Appellant in this regard. The only argument advanced in support of the submission that the impugned Judgment and Decree are void is the contention that the Appellant was not served pursuant to the order of 10.02.2015 and hence was unaware of the Judgment and Decree, as explained herein above.
13. This contention does not, in our opinion, create any valid ground in favour of the Appellant in as much as it is evident from the discussion on the subject in the impugned Judgment that initial service had been effected and the Appellant had due notice of the Underlying Suit in as much as he had entered appearance and his presence was recorded on certain dates of hearing.
14. It is thus beyond doubt that the Appellant had been duly served and was fully aware of the Underlying Suit having been filed, but through sheer negligence failed to take appropriate measures to properly defend the same, and instead adopted an ostrich like policy whereby he ignored the proceedings until after the culmination thereof in terms of the Judgment and Decree hereby impugned. Moreover, an Order of 10.02.2015 was passed in the Underlying Suit for issuance of notice through all modes, which was merely by way of indulgence as the grounds for the Court debarring the Appellant from filing his written statement already existed.

15. It need scarcely be mentioned that it is imperative for the proper working of any system of justice that in a context such as the one at hand a party aggrieved by an order passed by a competent judicial forum be required to assail such order in a timely manner through appropriate proceedings, as prescribed, and cannot be allowed to escape the consequence of his own indolence and circumvent limitation by recourse to a plea that the order sought to be questioned is void and hence is not subject to any statute of limitation.

16. In view of the foregoing discussion we are of the opinion that the line of argument taken by learned counsel for the Appellant is misconceived, and have no doubt or reservation in finding that the instant Appeal is clearly barred by limitation, which is dismissed accordingly. There is no order as to costs.

JUDGE

JUDGE

Karachi  
Dated \_\_\_\_\_