

# IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Mohammad Ali Mazhar** and **Agha Faisal, JJ.**

First Appeal 92 of 2015 : Riaz Hussain Khan vs.  
Askari Bank Limited  
& Others

For the Appellant : Mr. Muhammad Anwar  
Siddiqui, Advocate

For the Respondent No.1 : Mr. Jamil Ahmed, Advocate

Date of Hearing : 25.04.2019

Date of Announcement : 25.04.2019

## JUDGMENT

**Agha Faisal, J.** This appeal was filed assailing the order dated 20.10.2015 (“**Impugned Order**”) delivered by the learned Banking Court I at Karachi in Suit 1273 of 2010 (“**Suit**”) wherein, inter alia, an application, seeking the condoning of delay in filing of the leave to defend application, was dismissed and the Suit was decreed. It is considered appropriate to reproduce the focal constituent of the Impugned Order herein below:

“It is apparent from record that the summons in this suit were issued through all the modes as required under Section 9(5) of the financial Institutions (Recovery of Finances) Ordinance, 2001 including service Courier & postal service on 29.07.2010 & 30.07.2010 receipts whereof are available on court file but none of the Defendants i.e No.1, 2, 3, 5 & 6 turned up to defend the suit, consequently vide Orders dated 30.09.2010 the matter proceeded Exparte against them, after attachment of amount the defendant No.6 appeared in person on 02.12.2014 and his advocate filed vakalatnma on 08.12.2014, however the application for leave to defend was filed on 12.01.2015 which is time barred and no any sufficient reason is disclosed to condone the delay.”

2. Mr. Anwar Muhammad Siddiqui, Advocate argued the appeal and anchored his submissions on the single premise that the

dismissal of the leave to defend application, upon the ground of limitation, was unmerited as it amounted to precluding the appellant from participating in the Suit on hyper technicalities. It was further contended that the Impugned Order had misconstrued the law, as there was no occasion to dismiss the application for condoning of delay filed by the appellant. In conclusion, it was argued that since the dismissal of the leave to defend application was unwarranted therefore the entire consequential edifice of the Impugned Order was not sustainable in law.

3. Mr. Jamil Ahmed, Advocate appeared on behalf of the respondent no.1 bank and submitted that the Impugned Order was in accordance with law. Learned counsel argued that the appellant had appeared before the learned Banking Court more than four years after issuance of summons etc. and even then the leave to defend application was filed almost 42 days hence. Per learned counsel, no application for condoning of delay was filed along with the leave to defend application and it is apparent from the record that the same was filed more than three months later. Learned counsel submitted that even in the application filed for condoning of delay no cogent grounds had been stated to merit the favorable exercise of discretion by the learned Banking Court, hence, the same was rightly dismissed. In view thereof it was prayed that the subject appeal may be dismissed forthwith.

4. We have considered the arguments of the learned counsel and have appreciated the record to which our surveillance was solicited. Since the learned counsel has based his entire case upon the dismissal of the leave to defend application upon the ground of limitation, therefore, the primary point for determination herein, framed in pursuance of Order XLI rule 31 CPC, is whether there was any infirmity in the Impugned Order in the context of dismissal of the appellant's application for condoning of delay.

5. It may be pertinent to reiterate the timeline relevant to the present proceedings, as gleaned from the record. The Impugned Order records that after issuance of notices etc. the Suit was

proceeded ex-parte with effect from 20.09.2010. It is also apparent from the record that more than four years thereafter the present appellant appeared before the learned Banking Court in person on 02.12.2014; the advocate engaged by the appellant filed his vakalatnama on 08.12.2014; whereas, it is recorded that the leave to defend application was filed on 12.01.2015. Even if the learned Banking Court were to disregard the period between 29.07.2010, when the notices were issued, and 02.12.2014, when the appellant personally appeared before the learned Banking Court, it is demonstrated from the record that no leave to defend was filed within the prescribed period. Even if time is counted not from day upon which the appellant appeared in court but from the day when the counsel filed vakalatnama in the Suit, even then the leave to defend application was filed beyond the statutorily prescribed period of thirty days. We have also noted that the very application seeking condoning of delay was never filed with the leave to defend the application and the same was filed three months later, on 07.03.2015. We have also considered the constituents of the application seeking condoning the delay and are constrained to observe that the appellant had made out no justifiable ground therein.

6. It is the considered opinion of the Court that the prescriptions of limitation are not hyper technical and ignoring the same would render entire law of limitation as redundant. The superior Courts have consistently maintained that it is incumbent upon the Courts to first determine the issue of limitation. This was observed in the case of *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732 and it was maintained therein that it was obligatory upon a Court to decide the issue of limitation prior to deciding the suit. It has been maintained by the honorable Supreme Court in the case of *Lt. Col. Nasir Malik vs. Additional District Judge Lahore*, reported as 2016 SCMR 1821, that each day of delay had to be explained when seeking condoning of delay and that in the absence of such an explanation limitation the bar of limitation could not be lifted. In the present circumstances it is maintained that the appellant has been unable to justify the delay

admittedly occasioned, hence, the dismissal of the leave to defend application by the learned Banking Court was in due consonance with the law.

7. It is the considered view of this Court that the Impugned Order is elaborative of the reasoning relied upon to arrive at the conclusion stipulated therein and the learned counsel for the appellant has been unable to demonstrate any infirmity in respect thereof. In view hereof the present appeal, along with pending application/s, is hereby dismissed with no order as to costs.

JUDGE

JUDGE