

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
HCA No. 179/2019

Date	Order with Signature of Judge
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Fresh Case.

1. For orders on CMA No. 1293/2019
2. For orders on CMA No. 1294/2019
3. For hearing of main case.

29.04.2019

Mr. Rafiq Ahmed Kalwar, Advocate for the Appellant.

This Appeal arises from an Order made in Suit No.789/2018 on 14.03.2019, whereby the Application of the Appellant/Defendant No.1 seeking rejection of the plaint under Order 7, Rule 11 CPC (CMA No.7499/18) was dismissed. As the Appeal had been filed belatedly, on 10.04.2019, learned counsel for the Appellant had been put on notice as to maintainability on the very first date that the matter had been put up in Court.

In this regard, learned counsel for the Appellant invited attention to CMA 1294/19 filed under Section 5 of the Limitation Act, seeking that the delay be condoned, and to paragraphs 3 and 4 of the Affidavit filed in support thereof wherein the grounds advanced were that the Appellant had not been informed of the impugned Order until 05.04.2019, when she took steps to engage alternate counsel, and that the impugned Order was even otherwise a 'void order'. It was contended that this was so as the impugned Order was contrary to law, hence without jurisdiction. Turning to the merits, learned counsel pointed out that the underlying Suit filed by the Respondents Nos. 1 and 2 assails a gift said to have been made by their deceased parents in the year 2012 in favour of their brother, who is himself since deceased and whose widow is the Appellant/Defendant No.1. He submitted that upon the demise of the Appellants husband, his parents had themselves applied for grant of a Letter of Administration in respect of his estate vide SMA No.167/13, thus establishing the validity of the gift,

which also then came to be accepted by the Respondents Nos. 1 and 2 when they in turn supported the grant of an Amended Letter of Administration upon the demise of their father so as to reflect their status as his heirs in relation to his proportionate interest arising in the property as an incidence of his himself having been an heir of the donee. He contended that the gift was not open to further challenge, especially as it had not been alleged that the same was induced through fraud or undue influence. He submitted that, under the circumstances, the learned Single Judge erred in observing that a determination as to the time when the Respondents Nos. 1 and 2 came to have knowledge of the gift was a matter that required evidence and contended that the dispute, as set up, essentially entailed only a legal question as to whether a *sui juris* Muslim could validly deal in his/her property so as to make a gift in favour of one of his children to the exclusion of others.

Having considered the submissions made on CMA 1294/19, we are of the view that there is no discernible illegality afflicting the impugned Order that requires interference, and such questions as have been raised with regard to the determination on the question of limitation or as to the merits of the claim of the Respondents Nos. 1 and 2 in light of the nature of the gift and steps taken in SMA No.167/13 would fall to be determined in the underlying Suit at the appropriate stage, upon issues being framed in that regard. Suffice it to say for present purposes that the impugned Order was evidently made in the presence of the Appellant's counsel and the mere plea that the Appellant was not informed does not of itself come to the aid of the Appellant for purpose of the delay being condoned, but instead demonstrates neglect/indolence on her part, nor is such plea even supported by an Affidavit of counsel who had been appearing in the underlying Suit. The alternate plea as to the impugned Order being 'void' is also misconceived, as there is a clear distinction between an incorrect and void order, for whilst orders passed without lawful authority, without

jurisdiction, or against the principles of natural justice may be void, an order made by a competent judicial forum that suffers from some error cannot necessarily be so regarded. A mere irregular, incorrect, or erroneous order does not necessarily fall within conception of the term “void”, and a party aggrieved cannot be allowed to escape the consequence of indolence and circumvent limitation by recourse to a plea that the order sought to be questioned is void and hence is not subject to limitation. In the instant case, the learned Single Judge was certainly fully competent to adjudicate upon the matter and to pass the impugned Order. Under the circumstances, CMA No. 1294/2019 is dismissed, with the result that the Appeal, being barred by limitation is also dismissed accordingly, along with pending Applications, with no order as to costs.

JUDGE

JUDGE