

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Irfan Saadat Khan and
Yousuf Ali Sayeed, JJ

HCA No. 202 of 2020

Appellant : Imran Sanaullah, through
Abdul Karim Khan, Advocate.

Respondent No.1 : Rafique Ahmed Qandahari,
through Muhammad Vawda,
Advocate.

Respondents Nos.2 to 4 : Province of Sindh and others,
through Miran Muhammad
Shah, AAG.

Respondents Nos. 5 to 8: Syed Khaliluddin and others, in
person

Date of hearing : 08.12.2020 and 22.12.2020

JUDGEMENT

YOUSUF ALI SAYEED, J - The captioned Appeal arises from J.M. 15 of 2020 (the “**JM**”) and impugns the Order made therein on 01.09.2020, whereby the learned single Judge stated his reasons for dismissal of the matter vide a short order made in Court upon culmination of the hearing on an earlier date.

2. As it transpires, the Appeal came to be presented beyond the statutorily prescribed period, and in an endeavor to address the bar of limitation arising under the circumstances, the Appellant filed a Miscellaneous Application under Section 5 of the Limitation Act, 1908 (“**S.5**”), bearing CMA No. 2399/20 (the “**Condonation Application**”), seeking condonation of the delay in the following terms:

**“APPLICATION UNDER SECTION 5 OF
LIMITATION ACT R/W SECTION 151 OF CPC TO
CONDONE THE ONE DAY DELAY IN FILING OF
THIS APPEAL.”**

On the facts and reasons disclosed in the accompany affidavit, it is most respectfully prayed on behalf of above named Appellant that this Hon’ble Court may be pleased to Condon the delay caused in filing of this appeal as the judgment was announced on 01.09.2020. The appellant was out of Karachi as permanently residing in Lahore and unable to come to Karachi. The appellant when got the knowledge of judgment informed his attorney to file an appeal. But the attorney, was not feeling well even and unable to meet the lawyer. The attorney meet with lawyer on 22.09.2020. When recovered from illness. The lawyer immediately filed application for getting the certified copy of Judgment of JM dated 01.09.2020. The copy was received on 07.10.2020. Hence this appeal is delayed by few days. The Hon’ble Court may be pleased to condone the delay in filing of this appeal otherwise shall face the irreparable loss if not provided the right of appeal on technicalities.

Prayed accordingly in the larger interest of justice and equity.”

3. Proceeding with his submissions on the point of limitation, learned counsel for the Appellants essentially reiterated the content of the Condonation Application, and sought to explain the delay by contending that it was attributable to the failure of the counsel appearing on behalf of the Appellant in the JM to apprise him of its dismissal in a timely manner, coupled with the fact that the Appellant resided at Lahore, whereas his appointed attorney at Karachi had been unwell, hence could not come forward within time for filing of the Appeal. It was submitted that, as such, the delay in presentation of the Appeal was unintentional and ought to be condoned.

4. Conversely, learned counsel appearing on behalf of the Respondent No.1 submitted that the Appeal was barred by limitation and no valid grounds for condonation had been made out. He pointed out that the Appeal had been presented on 21.10.2020, whereas the JM had been dismissed vide a short Order made on 24.08.2020, which had not even been challenged by the Appellant and had attained finality. He submitted that the period of limitation would be to run from the date of the Order whereby the *lis* was finally disposed of and not against the reasons, hence limitation would run from that date of the short Order and the Appeal ought to have been filed by 14.09.2020 at the latest, hence was barred by almost 02 months if the period were reckoned from that date and was still barred by 46 days even if the period were reckoned from the date of the reasons (i.e. 01.09.2020), with the period of limitation having lapsed even before the Application seeking a certified copy was filed. Reliance was placed on the judgments in the cases reported as Abdul Hameed Dogar v. Federation of Pakistan 2010 SCMR 312, Petrosin Corporation Pvt. Ltd. v. OGDC through Managing Director PLD 2011 SC 235, and Province of Sindh v. Muhammad Sadiq and 5 others 2012 CLC 1409.

5. It was pointed out that the Condonation Application did not disclose any reason as to why the Appellant had not been unable to appear personally for filing the Appeal, especially when he had himself come forward for filing the JM. It was argued that neither the failure of counsel to inform the Appellant of dismissal of the JM nor the unavailability of the attorney constituted a ground for seeking condonation under S.5. Reliance was placed on cases reported as Muhammad Nawaz and 3 others v. Mst. Sakina Bibi and 3 others 1974 SCMR 223, Jhanda v. Maqbool Hussain 1981 SCMR 126, Mustafa v. Settlement Commissioner, Bahawalpur Division,

Bahawalpur 1974 SCMR 104, and Noor Muhammad v. Custom Appellate Tribunal, Peshawar Bench 2020 SCMR 246. It was submitted that the Condonation Application and the Appeal were accordingly liable to be dismissed.

6. Having considered the matter, it is apparent from a plain reading of the Condonation Application that the same raises a visibly tenuous and unsustainable plea and overlooks that fact that the grievance of the Appellant as to the dismissal of the JM arises from the short Order made on 24.08.2020, which has not been assailed, and that the Application for obtaining a certified copy of the reasons dated 01.09.2020 was filed on 22.09.2020, by when the Appeal had already become barred.

7. The precedents cited on behalf of the Respondent No.1 are instructive in that regard, with it having been held by the Honourable Supreme Court in *Petrosin's case* (Supra) as follows:

“On account of above survey of law on the subject, it has been the consistent view of this Court, that the short order even not elucidating the reasons when has been signed by all the Judges and it finally disposes of the matter and thus the Court does not retain any control over the lis, for all intents and purposes is the final judgment/order of the Court; the party aggrieved of such order/judgment intending to assail the same in appeal or review must avail its remedy within the prescribed period of limitation from the date of short order etc., rather than waiting for the detailed reasons and allowing the limitation to pass by, however, in such a situation a right can be reserved to add to the ground of attack as and when the reasoned judgment is made available.”

8. In the same vein, after examining the caselaw on the subject, a learned Division Bench of this Court observed in *Muhammad Sadiq's Case* (Supra) that:

“It has been the consistent view of the apex Court that the short order even not elucidating the reasons when has been signed and it finally disposes of the matter and thus the Court does not retain any control over the lis, for all intents and purposes is the final judgment/order of the Court; the party aggrieved of such order/judgment intending to assail the same in appeal or review must avail its remedy within the prescribed period of limitation from the date of short order etc., rather than waiting for the detailed reasons and allowing the limitation to pass by...”

9. The case stated in the Condonation Application is far from convincing and even otherwise does not constitute ‘sufficient cause’ within the contemplation of S.5. Firstly, the alleged failure of counsel appearing on behalf of the Appellant in the JM to inform him of its dismissal does not of itself afford a valid ground, especially when the Affidavit of the counsel to that effect has not even been filed in support of the plea. In the case of Maqbool Hussain (Supra), as regards the plea of negligence of counsel, the Honourable Supreme Court held that:

“Here, we are dealing with a case of gross negligence on the part of the counsel to inform the petitioner of the result of his case in the High Court; and also clear negligence on the part of the petitioner to keep himself in touch with the progress of the case in the High Court, as was his duty to do. In this connection we may, with advantage, refer to the decision in two recent cases, namely *Mustafa v. Settlement Commissioner* (1) and *Muhammad Nawaz v. Mst. Sakina Bibi* (2), in which it was emphasized that it was the duty of the petitioner to keep himself informed about the fate of his case in the High Court, and negligence on the part of the counsel to give him the necessary information would not per se constitute sufficient ground for condonation of delay when valuable rights have accrued to the opposite party by efflux of time.”

10. Furthermore, in Noor Muhammad’s case, the Apex Court addressed a plea raised for condoning the delay on the ground of ailment of the designated attorney as follows:

“We have gone through the application for condonation of delay which states that the entire process was followed up by a Special Attorney of the petitioner. The said Special Attorney was allegedly a chronic patient of some disease and was therefore unable to file the Reference within time. We have specifically asked the learned counsel to explain why the petitioner did not pursue the matter himself and why was he not following up the same. No plausible or reasonable explanation has been offered. The learned ASC has however half-heartedly pleaded that the petitioner was not available and his Special Attorney was unwell. We are afraid the said explanation is neither convincing nor plausible and does not constitute sufficient grounds for condonation of delay.”

11. In the matter at hand, even if the alleged illness of the attorney were to be considered for the sake of argument, the documents filed in support of the Condonation Application reflect that the attorney was firstly unwell prior to the Impugned Order being made and then again after the period of limitation had expired, hence that plea does not serve to advance the Appellant’s case. No reason has otherwise been given as to why the Appeal was not filed during the intervening period. Furthermore, as per the Appellant’s own showing, he became aware of the dismissal of the JM on 21.09.2020, yet the Appeal was filed on 21.10.2020, after lapse of a further one month, and the condonation Application is also silent as to why the Appellant did not himself appear for purpose of filing.

12. Under such circumstances, it is manifest that the Appellants case is disingenuous, and suggests that he was not only palpably negligent in failing to keep himself abreast of the fate of the JM, but also remained indolent after becoming aware of its dismissal by failing to act with promptitude thereafter.

13. It is well settled that limitation is not a mere technicality that can be overlooked, and for an authoritative pronouncement as to the salient features of the law on the subject, one need turn no further than the judgment of the Honourable Supreme Court in the case reported as *Khushi Muhammad through L.Rs, and others v Mst. Fazal Bibi and others* PLD 2016 SC 872, where the following principles were distilled from an examination of various relevant judgments of the superior Courts:

- “(i) The law of limitation is a statute of repose, designed to quieten title and to bar stale and water-logged disputes and is to be strictly complied with. Statutes of limitation by their very nature are strict and inflexible. The Act does not confer a right; it only regulates the rights of the parties. Such a regulatory enactment cannot be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies are fully complied with in letter and spirit. There is no scope in limitation law for any equitable or ethical construction to get over them. Justice, equity and good conscience do not override the law of limitation. Their object is to prevent stale demands and so they ought to be construed strictly;
- (ii) The hurdles of limitation cannot be crossed under the guise of any hardships or imagined inherent discretionary jurisdiction of the court. Ignorance, negligence, mistake or hardship does not save limitation, nor does poverty of the parties;
- (iii) It is salutary to construe exceptions or exemptions to a provision in a statute of limitation rather liberally while a strict construction is enjoined as regards the main provision. For when such a provision is set up as a defence to an action, it has to be clearly seen if the case comes strictly within the ambit of the provision;
- (iv) There is absolutely no room for the exercise of any imagined judicial discretion vis-à-vis interpretation of a provision, whatever hardship may result from following strictly the statutory provision. There is no scope for any equity. The court cannot claim any special inherent equity jurisdiction;

- (v) A statute of limitation instead of being viewed in an unfavourable light, as an unjust and discreditable defence, should have received such support from courts of justice as would have made it what it was intended emphatically to be, a statute of repose. It can be rightly stated that the plea of limitation cannot be deemed as an unjust or discreditable defence. There is nothing morally wrong and there is no disparagement to the party pleading it. It is not a mere technical plea as it is based on sound public policy and no one should be deprived of the right he has gained by the law. It is indeed often a righteous defence. The court has to only see if the defence is good in law and not if it is moral or conscientious;
- (vi) The intention of the Law of Limitation is not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right.
- (vii) The Law of Limitation is an artificial mode conceived to terminate justiciable disputes. It has therefore to be construed strictly with a leaning to benefit the suitor;
- (viii) Construing the Preamble and Section 5 of the Act it will be seen that the fundamental principle is to induce the claimants to be prompt in claiming rights. Unexplained delay or laches on the part of those who are expected to be aware and conscious of the legal position and who have facilities for proper legal assistance can hardly be encouraged or countenanced.”

14. As such, the Condonation Application is hereby dismissed, with the result that the Appeal also stand dismissed as being barred by limitation, along with all other pending Miscellaneous Applications.

JUDGE

JUDGE

Karachi
Dated _____