

ORDER SHEET

HIGH COURT OF SINDH AT KARACHI

C.P. No.D-6382 of 2017

Date	Order with signature of Judge
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1. For orders on CMA No.28506/17 (U/A)
 2. For orders on CMA No.28507/2017
 3. For order on as to maintainability of further petition.
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13.10.2017.

Mr. Dur Muhammad Shah, advocate for the petitioner.

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1. Urgency is granted.
- 2-3. This petition has been filed on 21.09.2017 against the order dated 07.10.2016 passed in Civil Revision Application No.99/2016 by the VIth Additional District Judge, Karachi East. On 28.09.2017, the counsel for the petitioner was specifically directed to satisfy the bench with regard to the maintainability of this petition, since this is an admitted position that the petition is barred by limitation, whereupon he sought time. It is seen from the record that on 11.10.2017 the petitioner has filed an application under Section 5 of the limitation for condonation of delay, which was not annexed with the main petition. The counsel was again asked that how this petition, being time barred, is maintainable and how the present application under Section 5 of the Limitation Act is maintainable, since the same admittedly was not filed at the time of filing of this petition but it has been filed at a subsequent date, to which he replied that this Court has ample power to condone the delay. It is a settled proposition of law that if any matter is time barred, application under Section 5 of the Limitation Act has to be filed along with the main case but in the instant case the said application has subsequently been filed i.e. on 11.10.2017. It is a well settled proposition of law that one should not sleep over his right and one has to be vigilant so far as his/her rights are concerned. There are plethora of judgments of the High Courts as well as the Hon'ble Supreme Court of Pakistan that law helps the vigilant and not the indolent. If the matter is time barred it has to be accompanied by the application under Section 5 of the Limitation Act requesting the Court to condone the delay in this behalf but no such application was filed when this petition was filed but

subsequently the said application was filed to cure this defect. In the decision given in the case of Khan Muhammad and others Vs. Mst. Zainab Bibi through legal Heirs and others (2000 SCMR 1227), under identical circumstances, Revision was dismissed by the Hon'ble Supreme Court of Pakistan by observing as under:-

“3. The application for restoration of the revision petition was admittedly barred by time. No application for condonation of delay was filed under Section 5 of the Limitation Act, therefore, the learned Single Judge dismissed the said application as barred by time observing that in the absence of any application seeking condonation of delay, the same could not be condoned.

4. Learned counsel for the petitioners has failed to persuade us that the impugned order suffers from any illegality. He frankly conceded that no application for seeking condonation of delay along with the application seeking restoration of main petition had been filed”.

The instant case appears to be on the same pedestal as cited above. We, therefore, under the circumstances, find the instant petition to be not maintainable being time barred as well as not maintainable since no application under Section 5 of the Limitation Act was filed at the time of filing of this petition. Hence, this petition is dismissed along with the listed application.

JUDGE

JUDGE