

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Muhammad Junaid Ghaffar, J.**  
**Agha Faisal, J.**

C P D 3374 of 2018 : Export Processing Zone Authority vs.  
Syed Imtiaz Hussain Kazmi & Others

For the Petitioner : Mr. Chaudhry M. Shaukat Ali, Advocate

For the Respondent : Mr. Syed Yasir Ali Shah  
Assistant Attorney Sindh

Mr. Ehsanullah, Advocate

Date/s of hearing : 31.10.2022

Date of announcement : 31.10.2022

## ORDER

**Agha Faisal, J.** Briefly stated, the learned Single Member NIRC rendered an order dated 24.04.2013 (“SB Order”) with which the petitioner was aggrieved. The petitioner applied for a certified copy thereof on 10.05.2013, however, instead of preferring an appeal in the statutory hierarchy, filed CP D 2102 of 2013 (“Writ Petition”) before this Court, on 16.05.2015, assailing the SB Order. The Writ Petition was dismissed on 19.04.2017, *inter alia* on the premise that the writ jurisdiction was unjustifiably invoked. On 16.05.2017, the petitioner impugned the SB Order before the learned Full Bench NIRC and the said appeal was dismissed on account of being time barred, vide order dated 26.03.2018 (“Impugned Order”). The entire case of the petitioner is that the learned Full Bench NIRC ought to have determined the *admittedly* time barred appeal on merit and not non-suited the petitioner on *mere technicalities*.

2. It is the considered opinion of the Court that the prescriptions of limitation are not *mere technicalities* and disregard thereof would render entire law of limitation otiose<sup>1</sup>. It has been maintained by the Superior Courts consistently that it is incumbent upon the Courts to first determine whether the proceedings filed there before were within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard<sup>2</sup>. It has been maintained by the honorable Supreme

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<sup>1</sup> *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as *LDA vs. Sharifan Bibi* reported as 2019 MLD 249; PLD 2010 SC 705.

<sup>2</sup> *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

Court<sup>3</sup> that each day of delay had to be explained in an application seeking condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed.

3. The Impugned Order records that while the SB Order was rendered on 24.04.2013, even a certified copy thereof was not sought by the petitioner until almost sixteen days later<sup>4</sup>. Even then no appeal was filed and recourse to the writ jurisdiction was voluntarily elected by the petitioner. Petitioner's writ petition was dismissed on 19.04.2017 and thereafter almost another month was expended before filing the appeal on 16.05.2017. Per paragraph 6 of the Impugned order, the appeal, time barred by almost four (4) years was filed in the absence of any application seeking condoning of delay. It is imperative to denote at this juncture that the chronology listed herein is a matter of record and no cavil in respect thereof has been articulated by the petitioner's counsel.

4. It is established that the appeal before the learned Full Bench NIRC was hopelessly time barred, yet the petitioner chose not to prefer any application to justify the delay and / or seek for the same to be condoned. The Impugned Order observes that "*Even with this appeal no application for condonation of delay has been moved so evidently the appellant is not armed with any plausible and convincing explanation of supra delay in the institution of the instant appeal*". It is settled law that each day of delay has to be explained in applications seeking condoning of delay, however, in the present circumstances no explanation appears to have been provided as no relevant application was ever preferred. Petitioner's counsel has remained unable to demonstrate before us that the Impugned Order could not have been rested upon the ground relied upon.

5. It is imperative to denote that this Court is not exercising appellate jurisdiction and the same has already been exhausted by the petitioner. Article 199 of the Constitution contemplates the discretionary writ jurisdiction of this Court and the said discretion may be exercised in the absence of an adequate remedy. In the present matter the alternate remedy has already been invoked and exhausted and no case is made out for entertaining this matter in the writ jurisdiction.

6. In view hereof, we are constrained to observe that in the *lis* before us the petitioner's counsel has been unable to set forth a case for the invocation

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<sup>3</sup> *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821.

<sup>4</sup> Per record, the certified copy was provided thereto on the same day.

of the discretionary<sup>5</sup> writ jurisdiction of this Court, hence, this matter was dismissed vide our short order announced at the conclusion of the hearing in court earlier today. These are the reasons for the short order.

JUDGE

JUDGE

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<sup>5</sup> Per *Ijaz Ul Ahsan J.* in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.