

IN THE HIGH COURT OF SINDH AT KARACHI

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

C P D 5228 of 2016 : Atif Ali vs. Appellate Tribunal Local Council Sindh & Others

For the Petitioner : Mr. Qaiser Jamil A. Mallick, Advocate

For the RespondentS : Mr. Abdul Jalil Zubaidi,
Assistant Advocate General Sindh

Malik Altaf Hussain, Advocate
Mr. Moin Khan, Advocate

Date/s of hearing : 05.12.2022

Date of announcement : 05.12.2022

ORDER

Agha Faisal, J. Briefly stated, the petitioner was aggrieved with an order dated 13.11.2013 (“Original Order”) and in respect whereof an appeal was filed *admittedly* with a delay¹ of 314 days². The learned Appellate Tribunal Local Councils Sindh was pleased to dismiss the appeal on account of limitation vide order dated 30.04.2016 (“Impugned Order”), hence, this petition. The entire case of the petitioner is that the Tribunal ought to have determined the *admittedly* time barred appeal on merit and not non-suited the petitioner on *mere technicalities*.

2. We are of the view that the requirements of limitation are not *mere technicalities* and disregard thereof would render entire law of limitation futile³. The Courts have consistently maintained that it is incumbent to first determine whether the proceedings filed were within time and such an exercise ought to be conducted by the Court regardless of whether or not an objection has been taken in such regard⁴. It has been maintained by the honorable Supreme Court⁵ that each day of delay had to be explained in an application seeking

¹ Appeal filed on 24.10.2014, hence, 344 days late.

² Per Rule 4 of the Sindh Councils (Appeal) Rules 1982.

³ *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as *LDA vs. Sharifan Bibi* reported as 2019 MLD 249; PLD 2010 SC 705.

⁴ *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

⁵ *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821.

condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed.

3. It is imperative to denote that the chronology listed in the Impugned Order is a matter of record and no cavil in respect thereof has been articulated by the petitioner's counsel. We have seen the application seeking to condone the delay, filed before the Tribunal, and are constrained to observe that the same is devoid of any grounds for grant thereof. 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 in the relevant application. Petitioner's counsel has remained unable to demonstrate before us that the Impugned Order could not have been rested upon the ground relied upon.

4. 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.

5. 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 of the discretionary⁶ 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

⁶ 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.