

# IN THE HIGH COURT OF SINDH AT KARACHI

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

First Appeal 84 of 2022 : Ghulam Mustafa vs.  
Waseem Iqbal & Another  
For the Appellant : Mr. Raheel Fayyaz Khan, Advocate  
Date/s of hearing : 17.10.2022  
Date of announcement : 17.10.2022

## ORDER

**Agha Faisal, J.** 1. Granted. 4. Granted, subject to all just exceptions. 2, 3 & 5. The appellant has assailed the judgment dated 19.08.2022 rendered by the learned Additional District & Sessions Judge X Karachi West in Summary Suit 08 of 2019; whereby the appellant's suit, in respect of a purported negotiable instrument, was dismissed *inter alia* on account of non-production of marginal witnesses, disowning of signature on the relevant instruments by one of the purported witnesses to the pro note and receipt and inability of the appellant to substantiate the existence of the relevant funds before the court. However, the primary issue before us is the fact that the present appeal is admittedly time barred by 4 / 5 days.

CMA 3271 of 2022 seeks condoning of delay by this Court on the sole premise that the counsel for the appellant remains mentally disturbed on account of infirmity of his wife; hence, the admitted delay in filing of the appeal. The affidavit in support of the relevant application is also filed by the dealing counsel and remains devoid of any grounds for grant of the application. While we sympathize with the learned counsel, however, remain constrained to find the said ground / premise to be unsustainable.

Section 5<sup>1</sup> of the Limitation Act 1908 is a provision of law empowering a court to condone delay in the filing of certain specified proceedings. It is the considered opinion of the Court that the prescriptions of limitation are not mere

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<sup>1</sup> 5. Extension of period in certain case. Any appeal or application for a revision or a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefore, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

technicalities and disregard thereof would render entire law of limitation otiose<sup>2</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>3</sup>. It has been maintained by the honorable Supreme Court<sup>4</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. In the present facts and circumstances the application seeking condoning of delay is found to be devoid of any cogent explanation / merit whatsoever.

It is, thus, observed that no case is made out for condoning of delay; therefore, CMA 3271 of 2022 is hereby dismissed *in limine*. As consequence hereof, the present appeal and other application/s are also dismissed *in limine*.

JUDGE

JUDGE

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<sup>2</sup> *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as 2019 MLD 249.

<sup>3</sup> *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

<sup>4</sup> *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821.