

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

CP No.D-2849 of 2021

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Date	Order with signature of Judge
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**12.04.2023**

Mr. Manzoor Hussain Khan, advocate for the petitioner.  
Mr. Faisal Mahmood Ghani, advocate for the respondent No.1.

Briefly stated, the petitioner is aggrieved with the judgment dated 19.02.2021 rendered by the learned Full Bench of the NIRC (“Impugned Judgment”), whereby the appeal preferred by the petitioner was dismissed on account of being time barred.

The entire case of the petitioner is that the learned Full Bench ought to have determined the *admittedly* time barred appeal on merit and not non-suited the petitioner on *mere technicalities*. On the other hand, the respondent’s learned counsel supported the Impugned Judgment *inter alia* upon grounds that writ jurisdiction was not automatically available once the entire statutory remedial recourse had been exhausted<sup>1</sup> and such a forum could not be construed to be yet another round of appeal<sup>2</sup>; mere unsubstantiated plea of sickness is no ground for condoning of delay<sup>3</sup>; obtaining a certified copy late does not condone delay<sup>4</sup>; an appeal barred by even a day could be dismissed<sup>5</sup>; once time begins to run, it runs continuously<sup>6</sup>; a bar of limitation creates vested rights in favour of the other party<sup>7</sup>; if a matter was time barred then it is to be dismissed without touching upon merits<sup>8</sup>; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance<sup>9</sup>.

We are of the view that the requirements of limitation are not *mere technicalities* and disregard thereof would render entire law of limitation otiose<sup>10</sup>. 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 regard<sup>11</sup>. It has been maintained by the honorable Supreme Court<sup>12</sup> that each day of delay had to be explained

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<sup>1</sup> *Shaheen Airport Services vs. Nafees ul Hassan Siddiqui* reported as 2001 SCMR 1307; *Naheed Nusrat Hashmi vs. Secretary Education Punjab* reported as PLD 2006 SC 1124; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as PLD 2013 SC 323.

<sup>2</sup> *Shah Jahan vs. Amjad Ali Jawaldar* reported as 2000 SCMR 88; *Yusuf Ali Shah vs. Quetta Serena Hotel* reported as 2001 PLC 533; *Syed Zahid Hussain vs. Hoechst Pakistan* reported as 1989 PLC 309.

<sup>3</sup> *Muhammad Hanif vs. Chief Secretary Sindh* reported as 2001 SCMR 1491.

<sup>4</sup> *Iftikhar Ali vs. S Abdul Rashid* reported as 2003 SCMR 1560.

<sup>5</sup> 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

<sup>6</sup> *Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

<sup>7</sup> *Dr. Anwar Ali Sahito vs. Pakistan* reported as 2002 PLC CS 526; *DPO vs. Punjab Labour Tribunal* reported as NLR 1987 Labour 212.

<sup>8</sup> *Muhammad Tufail Danish vs. Deputy Director FIA* reported as 1991 SCMR 1841; *Mirza Muhammad Saeed vs. Shahabudin* reported as PLD 1983 SC 385; *Ch Muhammad Sharif vs. Muhammad Ali Khan* reported as 1975 SCMR 259.

<sup>9</sup> *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

<sup>10</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>11</sup> *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

<sup>12</sup> *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821; *Qamar Jahan vs. United Liner Agencies* reported as 2004 PLC 155.

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

It is imperative to denote that the chronology listed in the Impugned Judgment 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 learned Full Bench, 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 reasonable explanation appears to have been provided in the relevant application. Petitioner's counsel has remained unable to demonstrate before us that the Impugned Judgment could not have been rested upon the ground relied upon.

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.

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 discretionary<sup>13</sup> writ jurisdiction of this Court, hence, this petition is hereby dismissed.

JUDGE

JUDGE

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<sup>13</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.