

# IN THE HIGH COURT OF SINDH AT HYDERABAD

Ist. Appeal 39 of 2023 : Muhammad Yakoob vs. Aslam Khan.  
For the Appellant/s : Mr. Bashir Ahmed Almani Advocate  
For the Respondent/s : Nemo.  
Date/s of hearing : 23.10.2023  
Date of announcement : 23.10.2023

## ORDER

**Agha Faisal, J.** The Court of the learned Jnd. Additional District Judge, Sanghar issued an order dated 29.01.2021 and decreed the Summary Suit under Order XXXVIII Rule 2 C.P.C. While this order was rendered on 29.01.2021, the present appeal has been preferred on 10.07.2023, almost two and half years later.

Per learned counsel, the limitation period for filing such appeal is ninety (90) days, hence, an application being CMA-1831/23, has been preferred, under section 5 of the Limitation Act 1908, seeking for the delay to be condoned.

The only ground taken in the affidavit accompanying with the application is as follows:

*"That I am layman and was under impression that the case will be tried and evidence will be recorded and remained unaware about the passing of impugned order and decree as in the open Court, the learned trial judge merely announced striking off my defence. Later on, on coming to know, I filed application under Order XXXVII Rule 4 CPC but the same was dismissed vide order dated 24.05.2023, hence, this appeal is within time from the order dated 24.05.2023. The delay is due to above reason, therefore, the delay is not deliberate, intentional and willful."*

In addition thereto, the only argument articulated by the learned counsel is that notwithstanding the fact that the summary suit has already been determined / decreed one and half years ago; permission may be granted to him to defend the same.

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

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<sup>1</sup> *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as 2019 MLD 249.

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>. The Superior Courts have consistently held that an appeal barred by even a day could be dismissed<sup>3</sup>; once time begins to run, it runs continuously<sup>4</sup>; a bar of limitation creates vested rights in favour of the other party<sup>5</sup>; if a matter was time barred then it is to be dismissed without touching upon merits<sup>6</sup>; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance<sup>7</sup>. It has been maintained by the honorable Supreme Court<sup>8</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.

It is imperative to denote that the appeal is admittedly time barred. The application seeking to condone the delay has been considered and this Court is constrained to observe that the same is devoid of any cogent ground 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 view of foregoing, this application seeking to condone the delay is found to be without merit, hence, dismissed. As a consequence, the First Civil Appeal and others application/s are dismissed on account of being time barred.

JUDGE

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

<sup>3</sup> 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

<sup>4</sup> *Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

<sup>5</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>6</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>7</sup> *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

<sup>8</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.