

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.
M.A.No.35 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on CMA-2774/2023
 2. For orders on office objections.
 3. For orders on CMA-2775/2023
 4. For orders on CMA-2776/2023
 5. For orders on CMA-2777/2023
- For hearing of main case.

30-10-2023

Mr. Jaleel Ahmed Memon, advocate for appellant.

Suit No.84 of 2021 was determined by the Anti-Encroachment Tribunal, Hyderabad on 08.08.2023. The present appellant, plaintiff earlier, applied for a certified copy of the judgment on 26.09.2023 and the record demonstrates that it was granted on the same date. The record shows that the present appeal was presented on 9th October, 2023. Learned counsel submits that limitation for filing such an appeal is 30 days, hence, CMA 2776/2023 has been filed seeking to condone the delay; on the grounds that the appellant is 70 years old and had remained unwell.

The office has raised serious objections; including as to how an appeal is maintainable in respect of the impugned order, *prima facie* in respect whereof no appeal has been provided. Learned counsel remained unable to submit any cogent response in such regard.

Be that as it may, it is imperative to consider the issue of limitation first. The law requires Courts to first determine whether the proceedings filed there before are within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard¹. The Superior Courts have held that proceedings barred by even a day could be dismissed²; once time begins to run, it runs continuously³; a bar of limitation creates vested rights in favour of the other party⁴; if a matter was time barred then it is to be dismissed without touching upon merits⁵; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance⁶.

Upon appraisal of the content pleaded in the accompanying affidavit coupled with the arguments articulated, it is the considered view of this Court that the delay has not been adequately explained or justified, hence, no case for is made out to condone the delay and CMA 2776/2023 is hereby dismissed. Consequently, the appeal, along with pending applications, is also dismissed *in limine*.

Judge

¹ *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

² 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

³ *Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

⁴ *Dr. Anwar Ali Sahito vs. Pakistan* reported as 2002 PLC CS 526; *DPO vs. Punjab Labour Tribunal* reported as NLR 1987 Labour 212.

⁵ *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.

⁶ *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.