

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-541 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on MA-858/2023
2. For orders on MA-860/2023

02.11.2023

Mr. Muhammad Sulleman Unar advocate for petitioner.

This petition, pending since 2021, assailed successive judgments rendered in the family jurisdiction; the same has been disapproved by the Honourable Supreme Court in the cases of *M. Hamad Hassan vs. Mst. Isma Bukhari and others* (2023 SCMR 1434) and *Arif Fareed vs. Bibi Sara and others* (2023 SCMR 413).

Be that as it may, vide order dated 29.09.2022 this petition was dismissed for non-prosecution. An application for restoration was filed on 24.05.2023 along with an application under Section 5(2) of the Limitation Act, 1908. The restoration application is admittedly time barred and the only ground articulated to justify the delay, in the accompanying application, is that the petitioner was not in contact with his counsel. Respectfully, such a bald unsubstantiated averment could not be sanctioned as justify each day of delay occasioned.

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. In the present case the delay has not been adequately explained or justified, hence, no case for is made out to condone the delay. Therefore, the application seeking to condone the delay is dismissed *in limine* and consequently the restoration application is dismissed being time barred.

Judge

Ahmed/Pa

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.