

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

First Appeal No.54 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on MA-2883/2023
2. For orders on MA-2884/2023
3. For orders on MA-2885/2023
4. For orders on MA-2886/2023
5. For hearing of main case

03.11.2023

Mr. Imam Ali Chang, advocate for appellant.

This admittedly time barred appeal has been filed against judgment dated 13.09.2023 rendered by the Court of Additional District Judge-I, Tando Adam in Summary Suit No.01 of 2023.

A summary suit was filed against the present appellant in which conditional leave to defend was granted. Upon admitted default in satisfying the condition of deposit; the matter proceeded exparte.

The present appeal is time barred and in respect thereof C.M.A No.2885 of 2023 has been preferred seeking to condone the delay. The only ground invoked is alleged inconsistent contact with the learned counsel. It is the thrust of the counsel's argument that an appellant ought not to be non-suited on the mere technicality of limitation.

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 otiose¹. The Superior Courts have consistently maintained 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 regard². The Superior Courts have held that an appeal barred by even a day could be dismissed³; once time begins to run, it runs continuously⁴; a bar of limitation creates vested rights in favour of the other party⁵; if a matter was time barred then it is to be dismissed without touching upon merits⁶; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance⁷. It has been maintained by the honorable Supreme

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

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

³ 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

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

⁵ *Dr. Anwar Ali Sahito vs. Pakistan* reported as 2002 PLC CS 526; *DPO vs. Punjab Labour Tribunal* reported as NLR 1987 Labour 212.

⁶ *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.

⁷ *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

Court⁸ 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 ground employed seeking for the delay to be condoned is *prima facie* inadequate. It is settled law that each day of delay has to be explained in seeking condoning of delay, however, in the present circumstances no reasonable explanation appears to have been provided, hence, CMA 2885/2021 is hereby dismissed. As a consequence, the present appeal is found to be time barred, therefore, while granting the urgency the appeal is dismissed along with pending applications.

Judge,

⁸ *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821; *Qamar Jahan vs. United Liner Agencies* reported as 2004 PLC 155.