

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**
R.A.No.272 of 2012

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of CMA-1379/2012
For hearing of CMA-1381/2012
For hearing of main case.

07-11-2023

Mr. Muhammad Arshad S. Pathan, advocate for applicants.
Mr. Ayatullah Khwaja, advocate for respondent No.7.
Mr. Muhammad Yousif Rahpoto, A.A.G.

Admittedly, this Revision is barred by six years, three months and four days, as jointly stated by the respective learned counsel. The matter has remained pending for over 11 years and even the application seeking for the delay to be condoned has not been considered as of date.

C.M.A 1379/2012 seeks for the said delay to be condoned on the premise that one of the applicants perished in fatal accident. It is articulated that since valuable rights are involved herein, therefore, the applicants ought not to be non-suited on the mere technicality of limitation. Respondent's counsel submits that no cogent justification for the delay has been demonstrated and even otherwise the demise under reference took place in 2010, which in itself was four years post rendering of the judgment assailed herein.

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.

No reason is articulated as to why the present proceedings were not preferred during the four years that the relevant applicant remained alive post rendering of the judgment. No cogent rationale is articulated for the subsequent delay either. Notwithstanding the forgoing no reason is provided as to the why proceedings could not be initiated by the surviving applicant within the period of limitation.

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 1379/2012 is hereby dismissed. As a consequence, the present revision is found to be time barred, therefore, the revision is dismissed along with pending applications.

Judge

Ahmed/Pa

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.