

IN THE HIGH COURT OF SINDH AT HYDERABAD

IIInd Appeal 56 of 2023 : Mir Shahabuddin Shah vs. Province of Sindh & Others.
For the appellant : Mr. Sajjad Ali Memon, Advocate.
Date/s of hearing : 30.11.2023.
Date of announcement : 30.11.2023.

ORDER

Agha Faisal, J. Briefly stated, F.C. Suit Nil of 2021 was filed before Senior Civil Judge, Sehwan and the same was dismissed on account of limitation vide order dated 03.03.2021. The operative part is reproduced herein below:

“Perusal of plaint and annexures shows that the alleged land was acquired about 30 years back, whereas limitation to seek compensation against Government as provided in the article 17 of the First Schedule of the limitation Act, 1908 is only one year even the limitation for claiming declaration is 06 years from the date of accrual of cause of action, whereas in the present matter, cause of action was allegedly accrued 30 years ago. Furthermore, it is considered that plaintiff has filed petition in the Honourable High Court where from he was directed to approach Revenue in the year, 2014 even then a period of 06 years has been passed and plaintiff has not been able to seek Declaration, if his cause of action is stretched to the year, 2014, hence as per my opinion, suit of plaintiff is barred under article 17 of first schedule of the limitation Act, 1908 hence the same is dismissed ...”

Civil Appeal 16 of 2021 was preferred before the Court of Additional District Judge, Sehwan and the same was also dismissed vide judgment dated 08.12.2022; while holding that the bar of limitation could not be displaced by the appellant.

The present second appeal assails the successive orders and the only contention of the learned counsel is that the appellant ought not to have been nonsuited mere on technicality of limitation since valuable rights were involved.

Heard and perused. It is the considered view of the court that the bar of limitation would precipitate a rejection of plaint in a civil suit, however, in the present circumstances the consequence would have been the same as seen in the initial dismissal order. The delay in preferring the suit has been adequately particularized in the initial order and subsequently in the appellate order. Learned counsel articulated no cavil to the narration of delay and remained unable to dispel the preponderant record / dates relied upon to render the findings of the suit being time barred.

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

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.

that proceedings 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 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 pertinent to observe that the preponderant bar of limitation could not be dispelled by the appellant before the relevant courts and no case has been set forth herein to suggest any infirmity in the findings rendered in such regard.

Be that as it may, a second appeal may only lie if a decision is demonstrated to be contrary to the law; a decision having been failed to determine some material issues; and / or a substantial error in the procedure is pointed out. It is categorically observed that none of the aforesaid ingredients have been identified by the learned counsel. In such regard it is also important to advert to section 101 of CPC, which provides that no appeal shall lie except on the grounds mentioned in the Section 100 of CPC. While this Court is cognizant of Order XLI Rule 31 CPC, yet at this stage no case has been set forthwith to entertain the present appeal in view of the reasoning stated above. As a consequence hereof, in *mutatis mutandis* application of Order XLI Rule 11 C.P.C, this appeal is hereby dismissed along with pending application. The office is directed to communicate a copy hereof to the appellate court.

Judge

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.

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.