

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Muhammad Shafi Siddiqui &
Sana Akram Minhas JJ

First Appeal No.01 of 2024

(*Saturgun v. Engineer Kumar & Another*)

1. For Hearing of CMA No.5 / 2024 (App. u/s 5 Limitation Act.)
2. For Hearing of CMA No.6 / 2024 (Exemption App.)
3. For Hearing of Main Case
Statement filed by Advocate for Appellant

Appellant: Saturgun son of Ramo
Through, Mr. Qamar Iqbal, Advocate

Date of Hearing / Short Order: 13-5-2024

Date of Reasons: 20-5-2024

ORDER

1. **Sana Akram Minhas, J:** The instant First Appeal, being time barred, was dismissed by us by means of a short order dated 13.5.2024.
2. This First Appeal emanates from a Summary Suit No.116/2020 (*Engineer Kumar v. Saturgun*) ("**Suit 116**") and impugns the Judgment and Decree dated 5.9.2023 issued by the learned Trial Court, which was in favour of the Respondent (Plaintiff in Suit 116) against the Appellant (Defendant in Suit 116). The Suit 116 was instituted in or about November 2020 under the provisions of Order 37 of the *Code of Civil Procedure, 1908* ("**CPC**") by the Respondent against the Appellant, seeking to recover a sum of Rs. 4,000,000/- provided by the former to the latter as a business investment.
3. Along with this Appeal, the Appellant has also filed an application (bearing CMA No.5/2024) ("**Condonation Application**") under section 5 of the *Limitation Act, 1908* ("**Act 1908**") seeking condonation of delay in instituting the instant First Appeal. This order addresses this Condonation Application.
4. Since this Appeal is preferred under the ordinary law (more precisely section 96 CPC), under Article 156 of the Schedule to the Act 1908, the limitation period prescribed for filing the First Appeal against a judgment and decree is

ninety (90) days. The cases of Muhammad Umar v. Muhammad Tufail (2008 SCMR 93) and Muhammad Aslam v. SME Bank Limited (2006 CLD 1301) can be referenced in this context.

5. However, the Appellant presented this Appeal on 23.12.2023, which is 108 days after the Judgment and Decree dated 5.9.2023. The record reflects the following:

- Impugned Judgment & Decree was passed on 5.9.2023
- Appellant applied for its certified copy on 14.9.2023
- Fee was estimated on 15.9.2023 but was deposited on 22.9.2023
- Certified copy was made ready on 23.9.2023
- Appellant filed the present Appeal in this Court on 23.12.2023

Thus, it is patent that the Appeal is eighteen (18) days beyond the prescribed limitation period.

6. This now brings us to the Condonation Application filed by the Appellant for condonation of delay in filing the Appeal and the relevant legal principles governing it.

7. In Qureshi Salt v. Muslim Commercial Bank (1999 SCMR 2353), the Supreme Court ruled on the issue of filing applications within the prescribed limitation period and the condonation of delay. The Court emphasized that under section 5 of Act 1908, delay cannot be condoned without an application, as each day's delay must be individually explained to the court. Thus, a sufficient reason for the delay must be provided in the application. Additionally, in SKB-KNK Joint Venture v. Water & Power Development Authority (2022 SCMR 1615), Lal Khan v. Muhammad Yousaf (PLD 2011 SC 657) and Shahid Pervaiz v. Muhammad Ahmad Ameen (2006 SCMR 631), the Supreme Court affirmed that limitation cannot be taken as a mere technicality as by expiry of period of limitation, valuable rights accrue to the other party, and every day's delay must be satisfactorily justified.

8. It is crucial to underscore the significance of the law of limitation. This legal framework mandates that courts must initially ascertain whether the proceedings filed therein adhere to the stipulated time frame. Such scrutiny is obligatory for the courts, irrespective of whether any objection has been raised to that effect. The Superior Courts have consistently emphasized that even a delay of a single day could warrant dismissal. Once the limitation period begins, it continues uninterrupted (i.e. runs continuously), creating vested rights in favor of the opposing party. Consequently, if a matter becomes time-barred, it must be dismissed without delving into the merits.

Furthermore, once the limitation period expires, the avenue for adjudication is closed, regardless of pleas of hardship, injustice, or ignorance.

9. The grounds stated in the Condonation Application and its accompanying affidavit are that "*after the announcement of the order*" (presumably meaning after the passing of the impugned Judgment and Decree), the Appellant fell ill and was also injured in a car accident, resulting in a spinal cord injury that delayed the filing of this Appeal. The learned Counsel for the Appellant supplemented the written contents of the Condonation Application with oral submissions, stating that the Appellant was brought to this Court in a wheelchair to swear his affidavit before the identification branch.
10. The documents annexed with the Condonation Application, including medical certificates, photographs of the damaged car, and photographs of the injured Appellant, are mostly undated. The few that are dated bear the date 26.11.2022, indicating that the events documented occurred a year before the filing of the present Appeal. On our specific query, the Appellant's Counsel confirmed this timeline and explained that after the accident and resulting spinal cord injury, the Appellant, with great difficulty, attended the Trial Court in a wheelchair to contest other suit(s) between the same parties, such as Summary Suit No.101/2022 filed by the Respondent, which was dismissed vide judgment dated 12.9.2023 (copy of which judgment is annexed to the Condonation Application). When this Court pointed out the inconsistency and questioned why the Appellant, if able to attend the Trial Court in a wheelchair shortly after the accident a year ago, did not come to this Court in time to file the Appeal, the Counsel had no response, much less a satisfactory one.
11. Furthermore, the aforementioned documents have been merely bundled together and haphazardly attached without offering specific crucial details. Neither the Condonation Application nor its associated Affidavit delineate date of the car accident, the precise period of bed confinement or incapacity, nor the date of sufficient recovery from the debility etc. Not only this, but the Appellant has also failed to provide any explanation for the delay of each day which ought to have been explained as required by the settled legal principles. The above relevant information and explanation have not been pleaded in the main Appeal either, rendering the Condonation Application imprecise and vague.
12. Based on the above, we conclude that the Appellant has not demonstrated sufficient cause and has, therefore, not been able to make out a case for condoning the delay in filing the Appeal. Hence, the application for

condonation of delay is dismissed, and consequently, the instant First Appeal is also dismissed as time barred, along with all pending applications.

13. These are the reasons behind the short order dismissing this First Appeal.

JUDGE

JUDGE

Karachi
Dated: 20th May, 2024