

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.2015 of 2017  
Suit No.2176 of 2017

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Date	Order with signature of Judge(s)
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1. For orders on maintainability of CMA No.9271/2023.
2. For orders on maintainability of CMA No.9361/2023.

**27.09.2024**

Ch. Abu Bakar Khalil, advocate for the plaintiff.

Per learned counsel, this suit was dismissed for non-prosecution on 10.03.2022. The restoration application has been filed beyond the pale of limitation, 30 days, in June 2023. CMA 9361/2023 has been filed under section 5 of the Limitation Act 1908 and it is argued that limitation, being a mere technicality, could not be employed to override substantive rights.

A party is required to remain vigilant with respect to legal proceedings; more so when the same have been preferred by the party itself. The truancy of the applicant from the proceedings under scrutiny is *prima facie* apparent. Under such circumstances it was the prerogative of the Court to determine the proceedings and that is what appears to have been done. Counsel remained unable to justify the persistent absence and no case has been made out to condone the default. The Supreme Court has observed in *Nadeem H Shaikh*<sup>1</sup> that the law assists the vigilant, even in causes most valid and justiciable. The fixation of cases before benches / courts entails public expense and time, which must not be incurred more than once in the absence of a reason most genuine and compelling. Default is exasperating and such long drawn ineptitude cannot be allowed to further encumber pendency of the Courts.

*Admittedly* the restoration application was time barred, hence, the application seeking to condone the delay. 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 regard<sup>2</sup>. The Superior Courts have held that proceedings barred by even a day could be dismissed<sup>3</sup>; once time begins to run, it runs continuously<sup>4</sup>; a bar of limitation creates vested rights in favour of the other party<sup>5</sup>; if a matter was time barred then it is to be dismissed without touching upon merits<sup>6</sup>; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance<sup>7</sup>.

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<sup>1</sup> Per Qazi Muhammad Amin Ahmed J. in *SECP vs. Nadeem H Shaikh & Others (Criminal Appeal 518 of 2020)*; Order dated 27.10.2020.

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

<sup>3</sup> 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

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

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

<sup>6</sup> *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.

<sup>7</sup> *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

Learned counsel remained unable to dispel the preponderant bar of limitation and could not justify the delay. Under such circumstances no case appears to have been made out to grant CMA 9361/2023, therefore, it is dismissed. Consequently, 9271/2023 is dismissed as barred by limitation.

Judge

Khuhro/PA