

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

**Execution No. 48 of 2013
Execution No. 49 of 2013**

Date: Order with signature of the Judge

1. For hearing of CMA No.2696/2022
2. For hearing of CMA No.2697/2022

01.02.2024

Ms. Sofia Saeed Shah advocate for the decree holder
Mr. Waqar Ahmed advocate for the Objector

On 25.10.2021 CMA No. 112 and 113 of 2020 were dismissed for non-prosecution, after having remained pending for a year without any progress whatsoever. It is demonstrated that said applicant had sought time on 02.06.2021 and indulgence was once again granted on 16.08.2021. However, even copies and costs etc. for the said applications had not been paid, hence, the order dated 25.10.2021.

Subsequently, the present applications have been moved to seek restoration.

CMA No.2697 of 2023 filed for restoration, however, CMA No. 2696 of 2022 has been filed under Section 5 of Limitation Act, 1908 as even the restoration application is *prima facie* time barred. Upon being called upon to proceed, learned counsel for the applicant seeks time as a senior counsel is stated to be unavailable.

The dismissal took place on 25.10.2021 and the present applications appear to have been preferred on 24.10.2022; a year later. The memorandum and affidavit of the limitation application is perused and the only ground invoked is a medical exigency of a person to whom a power of attorney had been given by the objector. The said exigency does not even pertain to the objector himself and even otherwise is stated to have occurred prior to the dismissal order, hence, does in no manner justify the delay occasioned thereafter.

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

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

regard². The Superior Courts have held 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 applicant.

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 persistent truancy of the applicant from the proceedings under scrutiny is *prima facie* apparent and the same has also been admitted by the counsel. 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*⁹ 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.

In the present case the delay has not been adequately explained or justified, hence, no case for is made out to condone the delay, therefore, CMA 2696/2022 is hereby dismissed *in limine*. As a consequence CMA 2697/2022 is found to be time barred, therefore, also dismissed *in limine*.

Office is instructed to place copy of this order in connected matter.

Judge

Amjad

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.

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.

⁹ Per Qazi Muhammad Amin Ahmed J. in *SECP vs. Nadeem H Shaikh & Others (Criminal Appeal 518 of 2020)*; Order dated 27.10.2020.