

ORDER SHEET
**HIGH COURT OF SINDH CIRCUIT COURT,
HYDERABAD**

C.P. No.D-2784 of 2022

Before:-

Justice Mrs. Kausar Sultana Hussain
Mr. Justice Khadim Hussain Soomro

Date of hearing & Order:

23.01.2024

Mr. Mahesh Kumar Bheel, advocate for the petitioner.

ORDER

Justice Khadim Hussain Soomro, J:- Through this instant petition, the petitioner has impugned the judgment and Decree dated 12.12.2017 passed by learned Additional District Judge Tando Allahyar whereby the Suit for declaration of damages, on account of defamation, filed by respondents was decreed.

2. Brief facts of the case are that the respondents (plaintiffs) filed Suit No.02 of 2014 for declaration of damages, defamation, insult, humiliation and permanent injunction. The respondent claimed an amount of Rs.206,500,000/- on account of defamation and humiliation. As per the contents of the plaint, the respondents averred that they enjoy a distinguished and esteemed standing, possessing social eminence within the local vicinity, the broader community in Pakistan, and internationally, but the defendant/petitioner by publishing fake, defamatory and derogatory news and uploading videos on internet levelling different allegations caused damages to them. The said Suit was decreed on 12.12.2017. Hence, this petition.

3. We have heard the learned counsel and perused the record. The counsel for the petitioner submits that the Suit of the respondent was based on false and baseless assertions. The counsel further submits that the Learned Additional District Judge Tando Allahyar did not appreciate the material facts on the record. The counsel lastly argued that the instant petition be converted into an appeal and fixed before the single bench of this court.

4. The petitioner has impugned judgment and Decree passed on 12.12.2017 in a Suit for defamation under the Defamation Ordinance 2002, which is a special law that provides provision of an appeal against the final order of the District Judge which shall lie to the High Court in single bench, within thirty days of the passing of a judgment. The lawmakers' intent behind establishing these remedies is to confine disputes falling within the jurisdiction of an appellate forum to be

exclusively decided before that forum. Any endeavour to bypass or evade these designated forums is deemed impermissible, as mandated by the provisions of Article 199(1) of the Constitution. Where an adequate forum was available to the petitioner in the shape of an appeal was not exhausted, the principle of exhaustion of remedies imposes a restriction on a litigant, prohibiting them from seeking a remedy in the constitutional jurisdiction.

5. The legal maxim 'Ubi jus ubi remedium' (wherever there is a right, there is a remedy). The maxim, as mentioned above, establishes a fundamental legal principle, affirming that an individual has a lawful entitlement to a concomitant recourse to initiate legal proceedings in a court unless the Court's jurisdiction is precluded. According to the rule of jurisdictional prudence, the courts usually show the restraint with the directions to the parties first to take the recourse of an alternate and or equally effective mechanism and framework of remedy provided rather than to take departure to surpass or circumvent such remedy. Reliance can be placed in the case of the Government of Punjab through the Secretary, Schools Education Department, Lahore and others v. Abdur Rehman and others (2022 SCMR 25).

6. The exceptional jurisdiction conferred by Article 199 of the Constitution is fundamentally designed to provide a specific remedy when the illegality and impropriety of an action by an executive or other governmental authority can be demonstrated without protracted inquiry. The term "adequate remedy" denotes a remedy that is effective, attainable, accessible, advantageous, and expeditious. The petitioner has an effective remedy for filing an appeal under section 15 of the Defamation Ordinance 2002, but the petitioner missed the bus without any reasonable and lawful excuse. The doctrine of exhaustion of remedies dictates that a litigant must not pursue a remedy in a different court or jurisdiction until the remedy prescribed by law has been fully exhausted. The writ jurisdiction of the High Court should not serve as the exclusive recourse or remedy for rectifying the wrongs, distress, and sufferings endured by a party, especially when an equally efficacious, alternative, and adequate remedy is available under the law. This principle is grounded in the notion that the litigant should not be inclined to bypass or disregard the provisions enshrined in the pertinent statute, which delineate specific procedures for challenging the impugned action. Proceedings under Article 199 of the Constitution are oriented towards enforcing a right rather than establishing a legal right. Therefore, the right asserted by the petitioner must not only be clear and complete but straightforward, and there must be an actual infringement of that right. In the case of Dr Sher Afgan Khan Niazi v. Ali S. Habib and others (2011 SCMR 1813), the apex court has observed as under:-

"19. In the light of what has been discussed herein above and in view of the various complicated questions of facts availability of

alternate/ adequate remedies and premature stage, no interference should have been made by the learned High Court in exercise of its Constitution Jurisdiction as conferred upon it under Article 199-A read with section 561-A, Cr.P.C. The Intra Court Appeal has, however has rightly been rejected in view of the dictum laid down by this Court in titled Nawazul Haq Chowhan v. State (2003 SCMR 1597)".

7. Reverting to the arguments of the counsel for the petitioner for the conversion of this petition into an appeal. We can not convert it into an appeal due to a heavy stumbling block put by the laches. The petitioner has impugned judgment and the Decree which were passed on 12.12.2017. However, The present petition was filed on 04.08.2022 after a lapse of more than four years; therefore, the petition is hopelessly barred by the doctrine of laches. There is no exception to the rule that the petition is to be entertained if there is a delay in seeking the remedy of appeal beyond the period of limitation provided under the statute. The petitioner delayed unreasonably in approaching this Court in a writ petition; the principle of laches or staleness applies to the present case. In such cases, the Court may exercise its discretion to refuse relief based on the delayed filing of the constitutional petition. It is important to note that the application of laches depends on each case's specific circumstances and the Court's discretion. The discretionary powers are to be exercised on the sound principle of justice and equity, which is missing in the present case.

8. The legal principle conveys that a court operating in equity, concerned with fairness and justice, will decline to provide assistance or remedy to legal claims that have become stale or inactive over time. If a petitioner has not promptly asserted their legal rights and acquiesced or remained passive for a significant duration, the Court may deem the claim "stale." In such cases, the Court may refuse to intervene or grant relief due to the petitioner's prolonged procrastination and lack of timely asserting their rights. This principle highlights the importance of diligence and prompt legal action to seek equitable remedies. Reliance can be placed on Chapters 641–642, specifically Monographs 1181–82 of Halsbury's Laws of England, Third Edition, Volume 14, which deal with laches and read as under:-

"A Court of Equity refuses its aid to stale demands, where the plaintiff has slept upon his right and acquiesced for a great length of time."

9. The concept of laches is not an abstract or technical rule. It applies when it would be unfair to grant a remedy because one party's actions could be seen as a waiver of that remedy or because one party's actions and indifference put the other party in an unreasonable position to assert that remedy later on. Two crucial factors in these cases are the duration of the delay and the nature of the acts done during that time, which can impact both parties and create a balance of justice or

injustice regarding the remedy. The reliance can be placed on *Lindsay Petroleum Company v. Hurd* ((1874) L.R. 5 PC 221), which was observed on pages 239 & 240:

"The doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine where it would be practically unjust to give a remedy either because the party has, by his conduct done that which fairly be regarded as equivalent to the waiver of it or where by his conduct and neglect he had, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, Two circumstances, always important in such cases are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

10. The writ will generally be refused where the petitioner does not demonstrate that he has proceeded expeditiously after discovering that it was necessary to resort to it. In all such cases, the petitioner must act speedily, and any unreasonable delay will warrant refusal. Such instances call for an extra dose of rigour while enforcing the rule of laches. Thus, laches denied the entitlement to the writ in the case where the petitioner waited for a reasonable time. It is admitted facts that the petitioners have filed the instant petitions in the wake of 4 years and eight months. The Law of Extraordinary Legal Remedies by Ferris 1926 Edition, monograph 176 at page 202, which for the relevant purpose reads as under:

"The writ will generally be refused in all cases where petitioner fails to show that he has proceeded expeditiously after discovering that it was necessary to resort to it, and especially its use. In all such cases of public detriment or inconvenience petitioner must act speedily, and any unreasonable delay will warrant refusal. In such cases the rule of laches is applied and enforced with particular strictness. So where petitioner delayed over ten months after his discharge, and nine months after notification thereof, the right to the writ was barred by laches."

11. The aims and objectives of Article 199 of the Constitution are to promote justice, safeguard rights, rectify any injustices or excessive exercise of jurisdiction by lower courts, and correct procedural illegality or irregularity that might have adversely affected a case. The petitioner filed the instant petition in the wake of 4 years and eight months without exhausting the remedy of an appeal. Consequently, the instant petition being misconceived is dismissed in limine along with pending applications.

JUDGE
JUDGE