

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Second Appeal No.82 of 2021

Appellant: Sohail Ahmed through Barrister Jawad Ahmed Qureshi, Advocate.

Respondents: NEMO.

Date of hearing: 03.02.2025.

Date of decision: 28.02.2025

JUDGMENT

MUHAMMAD HASAN (AKBER), J.- Through this Order, the preliminary question of maintainability of this Second Appeal is being decided, on the question of the same being barred by limitation.

2. Brief background of the proceedings is that the Appellant filed F.C. Suit No.618 of 2016 against the Respondents for specific performance, which was dismissed vide Judgment dated 18-09-2019 and Decree dated 25-09-2019 after framing of issues and recoding of evidence. Such Judgment and decree were upheld in Civil Appeal No.248 of 2019 by the learned 5th Additional District Judge Hyderabad vide Judgment dated 28-04-2021 and Decree dated 05-05-2021, which has been assailed in the instant second Appeal, filed under section 100 CPC.

3. Heard learned counsel for the Appellant on the question of limitation and perused the record with his able assistance.

4. The main ground pleaded by the learned counsel for the Appellant is the death of the Appellant's earlier counsel (Late Mr. Naimatullah Soomro). and ultimately about passing of the impugned Judgment and Decree. This second Appeal was filed on 27-08-2021. The Appellant filed then an application under section 5 of the Limitation Act 1908 on 31-08-2021 along with affidavit of the Appellant Sohail Ahmad Jamali, who according to the affidavit, is resident of House No.A-16, Cantonment, Hyderabad. It is stated in the said affidavit that late Mr. Naimatullah Soomro was counsel for the

appellant in the civil suit No.618/2016 and also in civil appeal No.248/2019 before the learned 5th Additional District Judge Hyderabad, who expired on 16-10-2020 and therefore the Appellant was not aware about passing of the impugned Judgment and Decree. It is further claimed in the affidavit that on 25-08-2021, he visited Hyderabad to meet his cousin and met the court clerk (Mr. Arshad) of the deceased counsel and there he came to know about passing of the impugned Judgment and decree. The clerk also gave him photo copy of the impugned Judgment and Decree which was obtained by Respondent No.1, based whereon, the instant appeal was preferred (along with such photocopy).

5. The principles governing the law of limitation, begin with the basic rule that the law of Limitation is not a mere technicality because once the limitation expires, a right accrues in favour of the other side by operation of law, which cannot lightly be taken away nor can it be lightly disturbed or brushed aside, unless "sufficient cause" is shown to the satisfaction of the Court. Reference can be made to the cases of '*Asad Ali v. Bank of Punjab*'¹, '*Ghulam Qadir v. Abdul Wadood*'², '*Abdul Sattar v. Federation of Pakistan*'³, '*Muhammad Islam v. Inspector-General of Police*'⁴ and '*Muhammad Anwar (deceased) through L.Rs. and others V. Essa and others*'⁵.

6. As on part of the litigant, it has been held by the Courts as the duty of every litigant to pursue his case diligently and vigilantly, and to keep track of his cause on regular basis, by inquiring its progress from his counsel at every stage of the case, and after every date of hearing, as was held in the case of '*Sheikh Nadeem Rehmat V. Mrs. Zarqa Jahanzeb and 4 others*'⁶.

7. Such responsibility has been imposed because of the basic legal principle that for the negligence of one party or his counsel, the other party should not be penalised, as was decided by the Supreme Court in the case of '*Zilfiqar Ali V. Lal Din and another*'⁷.

1. PLD 2020 SC 736
2. PLD 2016 SC 712
3. 2013 SCMR 911
4. 2011 SCMR 8
5. PLD 2022 Supreme Court 716
6. PLD 2024 Sindh 202 (DB)
7. 1974 SCMR 162

8. In addition to the above, delay of each and every day is also required to be explained by the party, and where delay is not explained through sufficient cause, the same cannot be condoned. Reliance in this behalf is placed on '*Lt.-Col. Nasir Malik v. Additional District Judge and others*'⁸.

9. In the case of '*Imtiaz Ali v. Atta Muhammad and another*'⁹, even a single day's delay in filing of an appeal was not condoned by the Supreme Court, since it had created valuable right in favour of the respondents, and no sufficient cause was found for filing the appeal beyond the period of limitation.

10. The law of limitation may harshly effect a particular party, but it has to be applied with all its rigour in accordance with the applicable law and, the Courts have no power to extend the period of limitation on equitable grounds". These were the words expressed by the Supreme Court of India in the case of '*P.K. Ramchandran v. State of Kerala and others*'¹⁰.

11. Perusal of record in the present case shows that the learned counsel for the Appellant expired on 06-10-2020, where after for five dates, the Civil Appeal No.248 of 2019 was fixed before the learned 5th Additional District Judge Hyderabad, however neither Appellant nor anyone on his behalf were present, and finally the appeal was decided vide impugned Judgment and Decree. The instant second Appeal was filed on 27-08-2021 with photocopies, whereas original certified copies of the Judgment and decree were filed in Court on 31-08-2021 through a Statement by the learned counsel for the appellant. The time prescribed for filing second Appeal is 90 days, as provided under article 156 of the Limitation Act 1908. Therefore the Appeal has been presented after a lapse of around 25 days.

12. That under exactly identical circumstances, in the case of '*Mehdi Hassan through legal heirs and others V. Punjab Co-Operative Bank and others*'¹¹, where condonation of delay was sought on the ground of heart attack and subsequent death of the earlier counsel, the Division Bench refused to condone the same. In addition to the above principles, one of the ground for rejection of condonation was that the Appellant was unable to establish engagement of the said counsel for the subject appeal. In the

8. 2016 SCMR 1821

9. PLD 2008 SC 462

10.(1997) 7 SCC 556

11. 2019 Y L R 1

present case, it is an admitted position on record that the appellant's earlier counsel expired on 06-10-2020 i.e. around six months prior to even passing of the impugned Judgment and Decree in the Civil Appeal, and therefore, question of his engagement in the present second appeal could not even be presumed. It is further noted that the address of the Appellant, as shown in the pleadings throughout the proceedings and in his own biometric affidavit filed in this second appeal, is shown as "House No.A-16, Cantonment Hyderabad", which also completely demolishes the story of the Appellant, as raised in his application for condonation of delay under section 5 of the Limitation Act 1908. The appellant ought to have remained more and more vigilant about his own case after demise of his counsel. As already held in the above referred Judgments, law does not help the indolent; that each and every day of delay in filing of the appeal was required to be explained, through sufficient cause; and that valuable rights have been created in favour of the opponent party due to appellant's such delay. What the Court has also to consider is that on one hand, the appellant should not be allowed to take benefit of his own mistakes whereas on the other hand, the Respondent should not be punished for the negligence and indolence on part of the Appellant. The appellant could neither show sufficient cause for even a single day, nor was he diligent, and for which, it would be completely unfair to penalize the Respondent, hence the delay in the present case cannot be condoned even on equitable grounds, as held in the above decisions. No merit, could therefore, be found in the application for condonation of delay.

13. The case law referred by the learned counsel for the Appellant (2009 YLR 1570, 1990 CLC 1936, 1989 MLD 3342, PLD 1992 Lahore 250) are neither applicable nor even relevant for the purposes of the present appeal, whereas the view of the Supreme Court in identical cases is different, as discussed above.

14. Upshot of the above discussion is that, the Appeal is dismissed, along with all pending applications, with no order as to costs.

J U D G E