

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
IInd Appeal No. 43 of 2020

Date	order with signature of Judge
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- 1.For hearing of CMA No. 1082/2000
- 2.For hearing of CMA No 1083/2000
- 3.For hearing of main case.

**24<sup>th</sup> March, 2025**

Mr. Adnan Ahmed, Advocate for Appellant.  
Mr. Syed Yousuf Advocate for the Respondent.

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Muhammad Jaffer Raza, J.:- Instant IInd Appeal has been filed against Impugned Order dated 14.01.2020 passed by learned XIth Additional District Judge Karachi South in Civil Appeal No. 08/2020. Facts of the case are summarized as follows:

2. Respondent No.1 filed Civil Suit No. 485/2013 for malicious prosecution against the Appellant. The Appellant filed written statement in the said suit and thereafter chose not to appear. Issues were framed and evidence was led by Respondents in the said suit; thereafter, trial court was pleased to pass judgment and decree dated 05.08.2015 and 08.08.2015 respectively. Thereafter, on 02.07.2018 the Appellant filed an application under section 12(2) CPC on the ground that judgment and decree of trial court was obtained through fraud and misrepresentation. The said application under section 12(2) CPC was dismissed on 02.07.2018. Thereafter, he preferred Civil Revision Application No. 69 of 2018, which was dismissed on 22.12.2018 then Appellant subsequently filed C.P.No.313/2019, which also met the same fate on 04.12.2019. After exhausting all remedies mentioned above, learned counsel for the Appellant filed Civil Appeal No. 08 of 2020, which was, too, dismissed vide impugned order.

3. Learned counsel for the Appellant has argued that the appeal was admittedly time barred, however, limitation does not run against the order which can only be described according to him, as “void”. It has been stated by the learned counsel that the acquittal in the said FIR was under C-Class after submission of challan by the Investigating Officer in the said case. It has further been stated by learned counsel that the basic principles of malicious prosecution i.e. the ingredients as setout in judgment Fazale Rahim v/s Rab Nawaz<sup>1</sup> were not met by the trial court and the test as laid down by the superior courts was not applied in the case in hand. Lastly, he has prayed that instant IInd Appeal may be allowed and case may be remanded back to trial court for decision afresh.

4. Conversely, learned counsel for the Respondent has argued that the appeal of Appellant was hopelessly time barred and has rightly been dismissed by the appellate court. It is further stated by learned counsel that Appellant affected appearance in the Civil Suit and filed written statement; thereafter willingly did not participate in the proceedings, issues were framed and the Respondents led their evidence and no cross examination was conducted thereon. He therefore prayed that instant IInd Appeal may be dismissed.

5. I have heard the learned counsel for the parties and perused the record.

6. It is apparent that Appeal No. 8 of 2020 was presented before the trial court on 23.12.2019 against judgement dated 05.08.2015 and decree dated 08.08.2015, therefore, this appeal was filed approximately four years and four months after the pronouncement of said judgment and decree. If the contention of the learned counsel is to be accepted, in reference to the period in which he filed 12(2) CPC application be condoned, even then it is apparent that application under section 12(2) CPC was filed almost after three years of the

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<sup>1</sup> 1999 SCMR 700

impugned judgement and decree, presumingly for the reason that the appeal was already time barred and the application under section 12(2) CPC was only one month short of the prescribed period of limitation of three years. Even if the said period is condoned, the appeal preferred by the Appellant would have been time barred by approximately three years and no reason has been cited which can condone such delay. It is settled proposition of law that in case of limitation, the delay of each and every day should be explained and no such explanation has been offered by learned counsel for the Appellant who has relied upon the sole ground that the order of trial court is void. At this juncture, I have also examined the order of trial court and the same cannot be classified as “void”. For the reasons above, instant IInd Appeal is dismissed with no order as to costs.

*Aamir/PS****J U D G E***