

**ORDER SHEET**  
**IN THE LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**

R.F.A. No.36584/2024

M/s. Sui Northern Gas Pipelines Limited                      **VS.**                      M/s. Bhatti Fabrics etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary
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10.06.2024                      M/s. Faisal Yaqub Khan and Muhammad Yasin Qadri, Advocate.

**C.M. No.1/2024 & Main Case**

**Ch. Muhammad Iqbal, J:-** Through this application (C.M.No.1/2023) under Section 5 of the Limitation Act, 1908 the applicant seeks condonation of delay occurred in filing the titled appeal against the consolidated judgment & decree dated 17.03.2022 passed by the learned Additional District Judge, Faisalabad.

2. Brief facts of the case are that the appellant/plaintiff filed a suit for recovery of Rs.12,19,57,918/- against the respondent/defendant in respect of consumption of sui gas as after adjustment of deposited security, the said amount is found outstanding against the respondent/defendant. The respondent/defendant filed contesting written statement as well as filed a separate suit for declaration, mandatory and permanent injunction against the appellant/plaintiff. The Gas Utility Court, Faisalabad consolidated both the suits, framed issues, recorded evidence of the parties and decreed the suit filed by the respondent/defendant

whereas dismissed the suit of the appellant/plaintiff vide consolidated judgment & decree dated 17.03.2022. Against the said decision, the appellant filed instant appeal alongwith an application under Section 5 of the Limitation Act, 1908 for condonation of delay occurred in filing the appeal.

3. We have heard the arguments of learned counsel for the applicant/appellant and have gone through the record.

4. Admittedly, the Gas Utility Court passed the judgment & decree on 17.03.2022. The appellant filed application for obtaining the certified copy of the impugned judgment & decree on 17.03.2022 and the requisite certified copies were prepared on 20.04.2022 and instant appeal was filed on 07.05.2022. On the same day, office of this Court raised certain objections allowing three days time to remove the same but the instant appeal was re-filed on 08.06.2024 after about 02 years & 02 months from the date of passing of the impugned judgment & decree whereas under Section 13 of the Gas (Theft Control and Recovery) Act, 2016 only a period of thirty days is provided for filing of the appeal against the final decision / decree to this Court, as such this appeal is blatantly time barred.

5. Alongwith the appeal, an application (C.M.No.1/2024) for condonation of the delay was filed with the plea that the file of the title matter was mixed up with other files and on inquiry of the client it was traced out and thereafter the appeal was instituted immediately, thus the delay was neither

willful nor deliberate and same may be condoned, suffice it to say that the Gas (Theft Control and Recovery) Act, 2016 is a special law which provides 30 days limitation for filing an appeal against the final decision/decreed as such the provisions of Limitation Act, 1908 which is general law in nature, is not applicable to the instant case. It is settled law the provisions of the special enactment always take preference over the general provisions of the Act *ibid*. Reliance in this regard is placed on the judgment of the Hon'ble Apex Court reported as *Gulistan Textile Mills Ltd. and another Vs. Soneri Bank Ltd. and another* (2018 CLD 203) and of this Court reported as *Messrs MCB Bank Ltd. Vs. Commissioner Inland Revenue* (2014 PTD 1874).

6. As regard the argument of the learned counsel for the applicant/appellant that initially the appeal was filed on 07.05.2022 which is well within the prescribed period of limitation, thus any period consumed in removing the office objections cannot frustrate a statutory remedy of appeal of the appellant, suffice it to say that the appellant did not remove the office objections within time, rather remained mum for a period of 749 days and no convincing reason has been furnished in this regard, thus the above argument has no force as a statutory remedy cannot be left open for a delinquent party to challenge the adverse order at the time of its own choice and if in contravention to the special statutory provision of limitation, the time period for availing a legal remedy is extended then there would be no end of the adversarial litigation which

tantamount to frustrate the ends of justice. Reliance in this regard is placed on a judgment of the Supreme Court of Pakistan cited as Asad Ali and 9 others Vs. The Bank of Punjab and others (PLD 2020 SC 736) the relevant portion whereof is reproduced as under:

“14. In the context of controversy before us, namely whether limitation stops running if an appeal is filed within time, even if it is returned for removing objections and re-filing the same, reference may usefully be made to a judgment of this Court reported as Lahore Development Authority v. Muhammad Rashid (1997 SCMR 1224), where this Court has clearly and categorically held as follows:

*“Learned counsel appearing in support of this petition has not addressed us on the dismissal of the revision petition on the ground of limitation. On perusal of the impugned judgment, however, we find that dismissal of the revision petition as time-barred is unexceptionable. Revision petition was originally filed in the High Court on 29-12-1994. The Deputy Registrar (Judicial) raised certain objections and returned the revision petition on 4-1-1995 with the direction to remove the objections within seven days. Revision petition was, however, re-filed by the petitioner on 10-10-1995. Office raised an objection that the revision petition when re-filed had become time-barred by 247 days and the petitioner was, therefore, asked to file an application for condonation of delay and it was then that the petitioner moved an application under section 5 of the Limitation Act seeking condonation of delay. By that time, the revision petition, as observed by the learned Judge, had become barred by 300 days. Be that as it may, the delay was sought to be condoned on two grounds, viz that due to the change of office, the case file got mixed up in the heap of other files and could not be traced despite best efforts of the officials and the law as to limitation for filing the revision petition was misconstrued by the*

*petitioner as previously no limitation was prescribed therefor. The application was supported by an affidavit of Deputy Director (Legal)/General Attorney of the petitioner. Both the grounds were repelled by the learned Judge holding that the objections raised by the Deputy Registrar of the High Court were not of such a nature as would require recourse to the office of the petitioner and in any case, it was not believable that the file could not be located for about a year. Note was also taken of the fact that no affidavit of the officials who were stated to have made the efforts to locate the file was placed on record nor was it shown as to what action was taken against the officials who failed in the discharge of their duties in locating the file. With respect to the second ground, it has been observed by the learned Judge that ignorance of law is no excuse and in this case, the change in law regarding the limitation for filing a revision petition was knowing to all the members of legal profession. The circumstances pointed out by the learned Judge quite clearly show that the petitioner's officials acted with gross negligence in re-filing the revision petition. They took almost one year in doing what they were required to do in seven days and the explanation offered by them for this inordinate delay has not been found to be convincing by the learned Judge and rightly so in our view. It has not been denied that the High Court Rules and Orders empowered the Deputy Registrar to raise the objections and fix the time for removing the same. That being so, revision petition re-filed long after the expiry of the period specified by the office was rightly dismissed as time-barred. Even on merits, the view taken by the two Courts below consequent upon the findings recorded by them on the basis of the admitted documentary evidence was not open to any legitimate exception.”*

Further, the Hon’ble Supreme Court of Pakistan in a recent order dated 11.07.2023 passed in a case titled as Zulfiqar Ahmad Vs Malik Sarfraz (deceased)

through his L.Rs., etc. [C.P.No.1334-L/2021] has held that the time consumed in removing the objections will be counted under limitation and if time consumed more than the provided in the statute, then such matter will be dismissed as barred by time. The relevant portion of the order (supra) is reproduced as under:-

“This petition is barred by 146 days. There is no application for condonation of delay. Learned counsel for the petitioner submits that petition was filed within time. However, record indicates that petition was filed on 23.01.2021 but office returned the file with objections and gave time to remove office objections which were not removed within time. Finally, after removal of objections the petition was filed on 07.07.2021. In this view of the matter, the petition was filed with a delay of 146 days. Consequently, this petition is dismissed as barred by time.”

7. Besides above, limitation is not a technicality rather it affects the remedies of a party and law of limitation cannot be bypassed to rescue the indolent persons who were sleeping over the infringement of their rights. Reliance in this regard is placed on cases cited as Ainuddin and others Vs. Abdullah and another (2019 SCMR 880) and Asad Ali and 9 others Vs. The Bank of Punjab and others (PLD 2020 SC 736). Thus, the application under Section 5 of the Limitation Act, 1908 for condonation of delay occurred in filing the instant appeal is dismissed being not maintainable.

8. Furthermore, a party could not be allowed to sleep over an adverse order for infinitum and challenge the same at the time of its own choosing or according to its own whims and caprice rather the

aggrieved party is placed under legal obligation to challenge such adverse decision/order/decreed within the prescribed period of limitation before the proper forum, whereas after expiry of the prescribed period of limitation, a tangible right stood accrued in favour of the opposite party and the said right cannot be frustrated merely on whimsical grounds. Reliance is placed on cases cited as Shahid Pervaiz alias Shahid Hameed v. Muhammad Ahmad Ameen (2006 SCMR 631), Messrs Blue Star Spinning Mills Ltd. VS Collector of Sales Tax and others (2013 SCMR 587), Ghulam Hussain Ramzan Ali VS Collector of Customs (Preventive), Karachi” (2014 SCMR 1594) and Ashiq Hussain Sabri Vs Secretary Health, Government of the Punjab & 8 Others (PLD 2011 Lahore 490 (D.B)).

9. As instant appeal is blatantly time barred which deserves dismissal, as such there is no need to requisition the record of the case and to decide the issue raised in the main appeal on merits. Reliance is placed on the case titled as Muhammad Din Vs Abdul Ghani & Another (2012 SCMR 1004).

10. In view of above, this appeal is also dismissed being barred by time.

11. Before parting with this judgment, it is noted with great concern that as a huge amount of Rs.12,19,57,918/- was involved in this case but the negligent conduct of the concerned officers/officials of the appellant-company who were pursuing the matter is the most deplorable. This appeal was

initially filed on 07.05.2022 which met with certain objections raised by the office of this Court but after receiving back the file from the office, the officers/officials of the appellant who were dealing with the instant case, not only misplaced the objection form but also did not re-file the appeal within stipulated period rather they fell in deep slumber for about 02 years and re-filed the appeal on 08.06.2024 which constitute deliberate and intentional misconduct of the said officers/officials, which caused huge monetary loss to the appellant-company. Thus, the concerned officers/officials including the Legal Wing of the appellant-company are prima facie responsible for this mischief. Reliance is placed on a case cited as Chairman, District Evacuee Trust Jhelum Vs. Abdul Khaliq through Legal Heirs and others (PLD 2002 SC 436) wherein the Hon'ble Supreme Court of Pakistan has held as under:

“5. We are conscious that on declining relief either to the government or public litigant in view of the provision of limitation, serious, injustice is caused to either of the party before the Court but we cannot help it in view of the existing law. However, concerning the cases belonging to the Government/autonomous bodies, at least one thing can be done that if case is decided against it on the question of limitation, the direction must be passed to the high-ups of the department so he/they may initiate departmental action against those officers who are directly or indirectly responsible for causing delay in instituting the cases beyond period of limitation and even in absence of such directions, it would be duty of such officer to take action accordingly because if such unscrupulous persons are not proceeded against, they will have no fear of causing huge losses to the Government/autonomous functionaries at the



cost of public exchequer because ultimately it is the public at large who suffers, being ultimate beneficiaries of the Government property.

6. We appreciate the steps taken by the incumbent Chairman of Evacuee Trust Property Board, Lahore for initiating actions against the officers who are responsible for filing instant petition beyond period of limitation and we are hopeful that in future other responsible officers would also do so.”

Another reliance is placed on a judgment titled as Chairman/Secretary, Pakistan Railways, Ministry of Railways, Government of Pakistan, Islamabad and others Vs. Muhammad Sharif Javaid Warsi (PLD 2003 SC 6) wherein the Hon'ble Supreme Court of Pakistan has held as under:

“5... It would not be out of context to note here that prior to this matter, we have already made identical directions in the case of Chairman, District Evacuee Trust, Jhelum (ibid) to the effect that the officers of Government Departments who are responsible for causing delay in instituting proceedings before different Courts shall be penalized because on account of their such conduct, Government sustains considerable loss which ultimately have to be borne by the public and lethargic tactics of the delinquent officers cannot be tolerated merely either on account of their ignorance of law or for any extraneous consideration.”

The Hon'ble Supreme Court of Pakistan in another case cited as Province of Punjab Vs. Sh. M. Riaz Shahid (2005 SCMR 1435) has held as under:

“8. However, before we part with this order we must express our grave concern over the conduct of the concerned officials in the matter of discharge of their obligations and who were consequently, grossly negligent in protecting public interest. In the first place the Superintending Engineer of Depalpur Canal Circle was negligent in the matter for neither having conducted the arbitration proceedings for

more than two years nor having informed the concerned parties of his inability to perform the said task. No interest was taken by the Department to pursue the proceedings before the Arbitrator which led to the passing of the award in question. The Department was again more than negligent in taking no steps to file an appeal in the Lahore High Court in proper time and took 1-1/2 years to do the needful.

9. This is neither the first time nor the only time when we have noticed such a misconduct on the part of the Government functionaries in the matter of protecting public interest. At times one gathers the impression that the concerned functionaries are in collusion with the private parties and permit the proceedings to go undefended and then file appeals and revisions etc. In the higher fora only to use the same to cover their illegal and dishonest designs. It is about time that the Government took stock of such-like conduct on the part of the Government functionaries which cause huge losses to public funds and property.

10. Send a copy of this order to the Chief Secretary of the Government of Punjab who shall look into the matter and then take proper action against the delinquent officials. He should also devise some mechanism and activate the same in consultation with the Law Secretary, the Solicitor and the Advocate-General amongst others to ensure proper pursuit of Court cases and other judicial proceedings so that public interest was properly pursued and protected”

Office is directed to dispatch copies of this order alongwith the appeal as well as the judgment & decree of the Gas Utility Court to the Managing Director, Sui Northern Gas Pipelines Limited who shall hold a thorough probe / extensive enquiry into the matter, take stern action against the delinquent officers/officials including the Legal Wing of the appellant company involved in the delayed filing of the appeal and affect recovery of amount from the officers/officials who are found guilty in the said inquiry. He is also directed to transmit copy of final

actions taken or recommendations made in this regard to the Deputy Registrar (Judicial/Civil) of this Court who shall place the same before this Court for perusal on administrative side.

**(Sultan Tanvir Ahmad) (Ch. Muhammad Iqbal)**  
**Judge Judge**

*Abdul Hafeez*

Approved for reporting.

**Judge Judge**