

Judgment Sheet

IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN

(JUDICIAL DEPARTMENT)

RSA No. 188 of 2016

Shamim Bibi

Vs.

Niaz Ahmad

JUDGMENT

Date of Hearing	24.09.2025
Appellant by:	Mr. Tajammal Hussain Awan, Advocate.
Respondent by:	Mr. Muhammad Arif Khan, Advocate

SYED AHSAN RAZA KAZMI, J. The present appeal brings into focus a recurring and important question *what is the legal effect of an appeal filed within limitation but unaccompanied by court-fee?* Some courts, adopting a strict view, treat such appeals as not properly instituted and dismiss them as time-barred. Others, following an equitable interpretation, allow the deficiency to be made good under Sections 148 and 149 of the Code of Civil Procedure, 1908 (**“the Code”**), even after expiry of limitation. Between these two approaches lies a middle course, wherein courts recognize their discretion to condone the defect, but confine such discretion to a narrowly defined temporal window. This judgment, therefore, seeks to answer the above question.

2. The facts are straightforward. The respondent/plaintiff filed a suit for specific performance of a contract of sale dated 06.07.2009. The suit was decreed by the learned Civil Judge, 1st Class, Kabirwala, on 24.03.2016. The appellant, aggrieved, filed an appeal before the learned Additional District Judge on 22.04.2016, well within the period of limitation. However, the memorandum of appeal was not accompanied by the requisite court-fee. The learned appellate court, instead of requiring the appellant to supply the deficiency, dismissed the appeal on 27.06.2016, holding that payment of court-fee beyond limitation could not relate back to the original date of filing. It is this order which now stands challenged.

3. Learned counsel for the appellant submits that the learned lower appellate Court has fallen in error in dismissing the appeal without affording the appellant an opportunity to make good the deficiency of court-fee as envisaged under Section 149 of *the Code*. It is contended that the said provision vests ample discretion in the Court to permit payment of the deficient court-fee at any stage of the proceedings and that such discretion has not been exercised in the present case. According to the learned counsel, the impugned judgment is thus unsustainable in law, having resulted in the denial of a vested statutory right of appeal, and deserves to be set aside. Reliance on various judgments has been placed¹.

4. Conversely, learned counsel for the respondent has opposed the arguments advanced on behalf of the appellant and submits that the impugned judgment suffers from no legal infirmity. It is contended that several authoritative precedents recognize the competence of a Court to dismiss an appeal which is not accompanied by the prescribed court-fee, such appeal being rendered incompetent and barred by limitation. Learned counsel maintains that the lower appellate Court, in declining to exercise discretion under Section 149 of *the Code*, has acted within the parameters of law, and its decision is thus supported by well-settled judicial precedents. It is therefore prayed that the impugned judgment be upheld and the appeal dismissed. Reliance of various judgments has been placed².

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

6. Building on these contentions, the pivotal question of law that arises for determination in this appeal is ***whether a plaint or memorandum of appeal filed without the requisite court-fee is void ab initio or merely defective and capable of validation under Section 149 of the Code of Civil Procedure, 1908; and further, whether payment of the deficient court-fee at a subsequent stage operates retrospectively to validate its institution from the date of presentation.***

¹ “Habib Akbar versus Pir Azam Syed” (2017 YLR 26), “Kh. Muhammad Fazil vs. Mumtaz Munawar Khan Niazi (deceased) through L.Rs. and another (2024 SCMR 1059), Syed Zahid Hussain Shah vs. Mumtaz Ali and others (PLD 2023 SC 470), Muhammad Mahibullah and another vs. Seth Chaman Lal through Legal Heirs and others (1994 SCMR 222), Mukhi Chatromal and another vs. Khubchand and 6 others (1993 SCMR 1113), Muhammad Hanif and others vs. Muhammad and others (PLD 1990 SC 859), Akbar Ali and others vs. Province of Punjab and others (1987 SCMR 811), Abdul Mateen Khan and others vs. Ghulam Muhammad (1985 CLC 2897), Shah Nawaz and 6 others vs. Muhammad Yousaf and 3 others (1972 SCMR 179) & Siddique Khan and 2 others vs. Abdul Shakur Khan and another (PLD 1984 SC 289).

² Qazi Muhammad Ilyas and 7 others vs. Qazi Muhammad Raees and 3 others (2014 CLC 160), Assistant Commissioner & Land Acquisition Collector, Badin vs. Haji Abdul Shakoor and others (1997 SCMR 919), Muhammad Tariq and others vs. Amjad Ali and others (PLD 2018 Lahore 502) & Province of Punjab in its Ministry of Communications and Works through Collector, Multan and 2 others vs. Registered Firm Nisarul Haq Associate Government Contractors and another (1998 MLD 589).

7. The persistence of conflicting judicial interpretations on this subject may be traced to the interplay between Section 149 C.P.C., Order VII Rule 11(c), the Court-Fees Act, 1870, and the Limitation Act, 1908. While Section 149 recognizes the curability of a deficient court-fee and empowers the Court to regularize the defect retrospectively, Order VII Rule 11(c) authorizes rejection of a plaint if the prescribed fee is not paid within the time granted. The Court-Fees Act embodies the fiscal dimension of the issue, treating payment as a matter between the litigant and the State, whereas the Limitation Act governs the temporal dimension of the right to sue or appeal. The tension arises when these statutes are applied in isolation rather than in harmony — one emphasizing procedural rigidity, the other discretionary equity. To resolve this, the reconciliation of these provisions, therefore, requires a purposive construction that preserves both fiscal discipline and substantive justice, ensuring that a procedural omission does not eclipse a vested right.

8. With this foundation in mind, the question must be examined in the context of the scheme of *the Code*. Sections 148 and 149 of *the Code* are of particular relevance.

Section 148 – Enlargement of time

Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

Section 149 – Power to make up deficiency of court-fees

Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person by whom such fee is payable to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

Section 148 empowers a Court to enlarge the period prescribed for doing an act required by the Code, even after expiry of the original period. Section 149 confers upon the Court the discretion to allow payment of the whole or any part of the court-fee at any stage, and expressly provides that upon such payment, “the document shall have the same force and effect as if such fee had been paid in the first instance.” The deeming clause thus introduced creates a legal fiction of retrospective validation, signifying that the institution of a plaint or appeal is not void for want of court-fee but remains incomplete until the deficiency is supplied. The underlying intent of the legislature is remedial — to advance justice by curing procedural irregularities rather than defeating substantive rights on technical grounds.

The words “at any stage” and “same force and effect” are the keys to understanding this provision. It is a curative provision — not merely procedural, but remedial, designed to protect litigants from technical fatality where intent to pursue a remedy exists but compliance with fiscal formality is deficient.

9. To achieve coherence, the harmonization of Section 149 of *the Code* with other provisions of *the Code* and allied enactments is essential to dispel the ambiguity that has surrounded its practical application. The apparent conflict between the liberal curative intent of Section 149 and the strict procedural mandates contained in Order VII Rule 11(c), the Court-Fees Act, 1870, and the Limitation Act, 1908 has led to inconsistent judicial outcomes. A coordinated interpretation alone can preserve the legislative equilibrium—ensuring that procedural law functions as a facilitator of justice rather than an instrument of technical defeat. When read harmoniously, these provisions form an integrated scheme that promotes fiscal responsibility, respects limitation, and at the same time safeguards the substantive right of appeal. The task of the Court, therefore, is to reconcile rather than compartmentalize these provisions, giving effect to the legislative purpose in its entirety.

10. It is by now well settled that provisions of Order VII Rule 11(C) are also applicable to appeals under the Code. The apparent tension between Section 149 and Order VII Rule 11(c) of the Code is more illusory than real. Order VII Rule 11(c) mandates that where the relief claimed is properly valued but the court-fee paid is insufficient, the Court shall fix a time for payment of the deficiency and reject the plaint only upon non-compliance. Section 149, on the other hand, empowers the Court to permit payment of the fee at any stage and, upon such payment, retrospectively validates the document. Read together, these provisions reveal a complementary legislative design: Rule 11(c) provides the procedural mechanism for affording opportunity, while Section 149 provides the substantive authority to regularize the document once compliance is achieved. The rejection contemplated by Rule 11(c) thus operates only when the litigant, despite opportunity under Section 149, fails to comply within the time prescribed. The two provisions must therefore be construed as mutually reinforcing—ensuring both procedural discipline and remedial flexibility.

11. Having examined the internal mechanics of the *Code*, it becomes necessary to explore its harmony with the Limitation Act, 1908. The relationship between Section 149 of the *Code* and the Limitation Act is defined by the principle that limitation governs institution, not perfection. When a plaint or appeal is filed within the period of limitation, the right of action or appeal stands preserved. The absence or deficiency of court-fee does not render the filing void; rather, it creates an irregularity which the Court may allow to

be cured under Section 149 *ibid*. The deeming clause—“shall have the same force and effect as if such fee had been paid in the first instance”—establishes the doctrine of relation back, by which payment of the fee subsequently relates to the date of filing. Consequently, an appeal filed within time but deficient in court-fee cannot be dismissed as time-barred once the deficiency is supplied within the period granted by the Court. Only where the initial filing itself is beyond limitation, or where the deficiency is not remedied despite opportunity, does the bar of limitation revive. This construction preserves the finality of limitation while preventing its misuse as a technical weapon to defeat bona fide claims. The celebrated decision in *Stuart Skinner alias Nawab Mirza* (1879)³ remains instructive even after more than one and a quarter century, for it illuminates the very features that continue to animate this controversy even today. The Court in that case pertinently observed that if the law of limitation is ever to be applied in matters relating to court fee, it must be done expressly and unambiguously through clear statutory language within the enactment governing the subject. The underlying rationale of that pronouncement suggests that Section 149 of the *Code* embodies an independent and discretionary power of the Court—its operation is not controlled by the Limitation Act, for it serves to cure procedural defects rather than to condone delay. It has already been held by the August Supreme Court in the case of *Siddique Khan Vs. Abdul Shakur Khan* (PLD 1984 SC 289) that in considering the options for exercise of discretion for grant of time for supply of deficiency in the court fee, considerations relevant to bar of limitation shall not be taken into account.

12. Turning to the fiscal dimensions, the Court-Fees Act, 1870 regulates the fiscal obligation of a litigant towards the State. Its object is revenue-oriented, not punitive. The payment of court-fee is a matter between the State and the suitor; it does not affect the jurisdiction of the Court or the adversary’s substantive rights. Section 149 of the *Code*, when read with Sections 12 and 28 of the Court-Fees Act, ensures that deficiency in fee, when paid under judicial direction, satisfies the statutory requirement in full measure. The conjoint reading of these provisions reveals that the legislature intended the collection of revenue without obstruction of justice. Therefore, where the omission is bona fide and subsequently rectified, the payment made under Section 149 not only discharges the fiscal liability but also cures the procedural defect retrospectively. The focus must remain on substantial compliance with fiscal law rather than mechanical forfeiture of the litigant’s right of remedy. Non-payment or belated payment of court fees does not adversely affect the interest of the opposite party⁴.

³ (1880) 2 ILRPC 241

⁴ Syed Zahid Hussain Shah vs. Mumtaz Ali and others (PLD 2023 SC 470).

13. Having established these harmonies, the discretion vested in the Court under Section 149 of *the Code* is not merely permissive; it is a judicial obligation to be exercised in furtherance of justice. The provision embodies a legislative recognition that inadvertent or bona fide procedural lapses should not extinguish substantive rights. The Court, therefore, ought to exercise its discretion liberally where the appeal or plaint has been filed within limitation and the omission to affix the prescribed court-fee is neither willful nor motivated by malafide intent. The object of the provision is remedial—to enable the litigant to perfect an imperfect act, not to punish him for an honest error. To refuse this discretion in deserving cases would be to defeat the very spirit of Section 149, which seeks to balance fiscal discipline with equitable justice. It is thus the duty of the Court to distinguish between genuine inadvertence and deliberate disregard, extending the protection of Section 149 to the former while withholding it from the latter. In this manner, judicial discretion under Section 149 operates as an instrument of fairness—ensuring that procedure serves justice, not the reverse. At least, one opportunity in exercise of said powers should be granted to the appellant. Reliance is placed on the case of Muhammad Hanif and others vs. Muhammad and others (PLD 1990 SC 859).

14. Yet, this discretion is not without limits, the discretion conferred by Section 149 of the *Code* is equitable and not unqualified. It is intended to assist the diligent, not to absolve the negligent. The Court is under no obligation to exercise such discretion in favour of a litigant who displays contumacious conduct, lack of bona fides, or persistent disregard of judicial directions. Where an appellant, despite having been granted specific time and opportunity to affix the requisite court-fee, willfully defaults or remains indifferent to compliance, the Court justifiably declines indulgence. Similarly, where the appeal itself is presented beyond limitation, the defect is not procedural but jurisdictional, and Section 149 cannot be invoked to resuscitate a barred cause. Courts are also entitled to refuse relief where the omission to pay court-fee is motivated by mala fide intent, deliberate evasion of revenue, or reckless abuse of process. In such situations, dismissal of the appeal—whether as incompetent, non-maintainable, or time-barred—is not punitive but a legitimate assertion of procedural discipline. The benevolence of Section 149 ends where indifference or dishonesty begins.

15. In the case of Assistant Commissioner & L.A.C., Badin v. Haji Abdul Shakoor (1997 SCMR 919), the august Supreme Court held that where an appellant knowingly filed an appeal with deficient court-fee and delayed compliance even after objection, such behaviour reflected reckless indifference and bad faith, disentitling the party from judicial indulgence. Likewise, in the case of Province of Punjab v. Nisar-ul-Haq Associates (1998 MLD 589), this Court characterized a two-year delay in affixing the proper stamps

as definitely contumacious, rejecting the plea that financial sanction from the Government could justify the lapse. The Court emphasized that Section 149 C.P.C. protects bona fide omissions, not habitual or deliberate defiance of legal duty. Similarly, in the case of Muhammad Tariq v. Amjad Ali (PLD 2018 Lahore 502), the petitioners were found both negligent and contumacious for leaving the appeal pending for more than two years and ten months without rectifying the deficiency, despite repeated opportunities. The Court reaffirmed that the discretion under Section 149 of the *Code* is confined to genuine oversight and cannot be extended to those who, by willful inaction and procedural disregard, frustrate the administration of justice.

16. Drawing from these illustrations, the legal position on this subject now stands crystallized through a consistent line of authority from the superior Courts. In the case of Habib Akbar v. Pir Azam Syed (2017 YLR 26 [Peshawar]), it was held that once an appeal is filed within limitation and notice has been issued, it cannot be dismissed merely for non-affixation of court-fee—the omission being a curable defect. The Court must, either on application or suo motu, determine whether time should be extended under Section 149 of the *Code* or Sections 12 and 28 of the Court Fees Act, 1870. Earlier, in the case of Siddique Khan v. Abdul Shakur Khan (supra), the august Supreme Court emphasized that a litigant is entitled as of right to at least one effective opportunity to make good the deficiency of court-fee, specifying both the amount and the period of compliance, and that dismissal without granting such opportunity vitiates the order. The same principle was reaffirmed in the case of Syed Zahid Hussain Shah v. Mumtaz Ali (PLD 2023 SC 470), wherein it was observed that the object of the Court Fees Act is to secure revenue for the State, not to furnish a weapon of technicality to one litigant against another, and that non-payment of court-fee neither prejudices the adversary nor extinguishes a substantive right when the omission is bona fide.

17. This liberal interpretation, however, is balanced by the discipline recognized in the case of Kh. Muhammad Fazil v. Mumtaz Munnawar Khan Niazi (2024 SCMR 1059), holding that once a time-bound opportunity under Section 149 C.P.C. is granted and the litigant defaults, the order becomes conditional and the Court thereafter is functus officio. Likewise, the cases of Sardar Muhammad Kazim Ziauddin Durrani v. Sardar Muhammad Asim Durrani (2001 SCMR 148) and Provincial Government of Balochistan v. Abdullah Jan (2009 SCMR 1378) reiterate that payment of court-fee is a fiscal matter between the litigant and the State; it neither affects the Court's jurisdiction nor the adversary's rights, and procedural rules must be interpreted to advance, not obstruct, justice.

Read conjointly, these precedents affirm that where an appeal is instituted within limitation, the absence or deficiency of court-fee does not invalidate its presentation. The defect is curable under Sections 148 and 149 of the *Code*; the appeal relates back upon payment, and dismissal on limitation is justified only when the filing itself was belated or the omission deliberate and contumacious.

18. In light of this crystalized position, the duty of the Court under Section 149 is not merely discretionary—it carries a degree of judicial compulsion. The Supreme Court in *Siddique Khan's case* (*supra*) held that in every case where a document is insufficiently stamped, the Court must grant at least one effective opportunity to the litigant to make good the deficiency, clearly indicating both the amount due and the time allowed for compliance. Dismissal without affording such opportunity vitiates the order for want of lawful exercise of jurisdiction.

Thus, the Court is obligated to distinguish between inadvertence and indifference. A litigant's bonafide omission deserves indulgence; his obstinate disregard of judicial directions does not.

19. Nevertheless, the flexibility granted under Sections 148 and 149 of the *Code* does not confer perpetual license to default. Once a time-bound direction is given for making up the deficiency and the litigant fails to comply, the order becomes conditional and the Court is rendered functus officio in respect thereof. Judicial indulgence must not dilute the authority of the Court or incentivize negligence. The golden mean lies between compassion and discipline—leniency for bona fide lapses, firmness against indifference or abuse.

20. Synthesizing these elements, from the cumulative reading of the jurisprudence including the cases of *Siddique Khan (supra)*, *Habib Akbar (supra)*, *Syed Zahid Hussain Shah (supra)*, *Kh. Muhammad Fazil (supra)*, *Sardar Muhammad Kazim Ziauddin Durrani (supra)*, and *Provincial Government of Balochistan v. Abdullah Jan (2009 SCMR 1378)*, the following principles emerge:

- i. Filing within limitation preserves the right of appeal; non-affixation of court-fee at the initial stage is a procedural irregularity, not a jurisdictional defect.
- ii. The Court must, at least once, exercise discretion under Section 149 of the *Code* to allow payment of deficient court-fee within a reasonable and specific time.
- iii. Upon such payment, the document relates back to the date of presentation and the appeal is deemed to have been validly instituted from that date.
- iv. Dismissal on technical grounds is impermissible where the omission is neither willful nor mala fide.

- v. However, where the Court's order fixing time is willfully disobeyed, indulgence ceases and the order of rejection attains finality.
- vi. The objective of court-fee law is fiscal, not penal; procedural rules must advance justice rather than defeat it.

21. Applying these principles here, in the present matter, the appeal was filed within limitation. The deficiency of court-fee was procedural and not accompanied by any element of bad faith or deliberate delay. The lower appellate court, however, dismissed the appeal outright as time-barred on the sole ground that the requisite court-fee had not been affixed at the time of filing. Such approach betrays a misunderstanding of the statutory framework and conveys a mistaken impression that the discretion u/s 149 *ibid* is optional and may be bypassed altogether. This view is inconsistent with the settled judicial practice and the underlying scheme of the *Code*. Once the appeal stood filed within limitation, the omission to pay court-fee could be cured under Section 149 of the *Code* and the payment, when made, would relate back to the date of filing.

The lower appellate court's order, therefore, suffers from a jurisdictional error—by treating a curable irregularity as a fatal defect—and amounts to a refusal to exercise discretion vested by law.

22. The order sheet of the learned Appellate Court further reveals that the office, while entertaining this appeal, never raised any objection regarding the deficiency of court fee but proceeded to entertain it simpliciter. Since the appeal was duly received, numbered, and processed by the Court functionaries without objection, the appellant cannot now be penalized for an omission attributable to the office itself.

23. Consequently, this Regular Second Appeal is **allowed**, the impugned order of the learned lower appellate court is **set aside** and the matter is remanded back for decision afresh on merits after granting the appellant an opportunity to deposit the requisite court-fee within a period to be fixed by the Court. The learned appellate court shall conclude proceedings expeditiously, preferably within sixty days of receipt of this judgment. Office is directed to transmit a copy of this order to the Court concerned for compliance.

(Syed Ahsan Raza Kazmi)
Judge

APPROVED FOR REPORTING