IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE MANZOOR AHMAD MALIK

Civil Appeals No. 2564/2001, 2658/2006, 1670/2008, 60-L/2013, 280-L/2013, 60/2014, 965/2014 and 218/2015

(On appeal from the judgment dated 25.6.2001/27.8.2002/2.6.2008/17.12.2012/ 23.10.2013/7.4.2014/3.10.2014 of the Lahore High Court, Lahore/Peshawar High Court, Peshawar/Lahore High Court, Multan Bench/Peshawar High Court, D.I. Khan Bench/Lahore High Court, Lahore/Peshawar High Court, D.I. Khan Bench passed in C.R.No.1611/2000, R.F.A.No.29/1996, R.F.A.No.230/2005, R.S.A.No.4/1996, R.F.A.No.185/2011, R.F.A.No.4/2014 and C.R.No.124-D/2014)

Khushi Muhammad (deceased) through L.Rs.	(in C.A.2564/2001)
LDA through its D.G.	(in C.A.2658/2006)
Fazal-e-Yasir etc.	(in C.A.1670/2008)
Kh. Muhammad Mehmood etc.	(in C.A.60-L/2013)
Muhammad Yousaf etc.	(in C.A.280-L/13)
Muhammad Yousaf	(in C.A.60/2014)
Malik Akhtar Khan	(in C.A.965/2014)
Muhammad Ramzan	(in C.A.218/2015)

...Appellant(s)

VERSUS

Mst. Fazal Bibi etc.	(in C.A.2564/2001)
Muhammad Latif etc.	(in C.A.2658/2006)
Qazi Hamidduddin	(in C.A.1670/2008)
Muhammad Yousaf etc.	(in C.A.60-L/2013)
Kh. Muhammad Mehmood etc.	(inC.A.280-L/2013)
Muhammad Younas etc.	(in C.A.60/2014)
Ashiq Hussain	(in C.A.965/2014)
Mst. Saira Bibi	(in C.A.218/2015)

...Respondent(s)

C.A.2564/2001
For the Appellant: Raja Muhammad Ibrahim Satti, Sr. ASC
Mr. M. S. Khattak, AOR

For the Respondents: Malik Muhammad Qayyum, Sr. ASC
Mian Hamid Farooq, ASC
Syed Rifaqat Hussain Shah, AOR

C.A.2658/2006
For the Appellant: Mr. Khurram Raza Chaudhry, ASC

For Resp. No.12: Nemo

For Resp. No.16:	Mr. Waqar Ahmed Sheikh, ASC Gulzar Hussain, Asstt. Director (Hort.), PHA Mr. Muhammad Tariq Nazir, Asstt. Law, PHA
L.Rs. of Resp.1, 10 & 11:	Ex-parte
L.Rs. of Resp.2-9, 13-15:	Ex-parte

C.A.1670/2008

For the Appellant:	Mian Muhibullah Kakakhel, Sr. ASC
For the Respondent(s):	Mr. Abdul Sattar Khan, ASC

C.A.60-L/2013

For the Appellant:	Ch. Mushtaq Ahmed Khan, Sr. ASC
For the Respondent(s):	Ch. Nusrat Javed Bajwa, ASC (Resp.Nos.1-3(i-vi),4(A-D),7(iv-viii),10-19,24-48,54(A-C),55,56(ii-v),57-65)
For Respondent 7(i-iii):	Mr. Zahid Hussain Khan, ASC

C.A.280-L/2013

For the Appellant:	Ch. Nusrat Javed Bajwa, ASC
For Respondents 1-4:	Ch. Mushtaq Ahmed Khan, Sr. ASC
L.Rs. of Resp. No.5:	Not represented

C.A.60/2014

For the Appellant:	Mr. Muhammad Munir Peracha, ASC
For Respondents 1-2:	Mr. Gulzarin Kiyani, Sr. ASC
For Respondent No.3:	Not represented

C.A.965/2014

For the Appellant:	Sardar Muhammad Aslam, ASC
For the Respondents:	Ch. Muhammad Munir Akhtar Minhas, ASC

C.A.218/2015

For the Appellant:	Mr. Gulzarin Kiyani, Sr. ASC
For the Respondent(s):	Syed Mastan Ali Shah Zaidi, ASC
Dates of Hearing:	08.02.2016, 09.02.2016 & 10.02.2016

...

JUDGMENT

MIAN SAQIB NISAR, J:- Through these matters we have been called upon to answer the question as to **whether the time spent in pursuing an appeal before a wrong forum can be condoned and/or excluded from the prescribed period of limitation**. In the above context certain ancillary and incidental propositions also require resolution:-

(i) Whether Section 14 of the Act applies to appeals and **if not**, whether the principles enshrined therein *(Section 14)* can be made applicable while considering if a sufficient cause has been made out under Section 5 of the Act;

(ii) Whether the institution and the pendency of the appeal before a wrong forum i.e. one having no jurisdiction on account of wrong advice of the counsel constitutes a **sufficient cause** for condonation of delay in terms of Section 5 of the Limitation Act, 1908 *(the Act)*;

(iii) Where an appeal which has been entertained by the staff of the court or the court itself which has no pecuniary jurisdiction and is ultimately returned to the appellant or is dismissed, whether this protects the appellant from the bar of limitation and/or constitutes a **sufficient cause** for the condonation of delay on the principle of *actus curiae neminem gravabit*; and

(iv) Whether the discretion exercised by the court(s) below in condoning the delay cannot be interfered with by the higher court(s) unless the discretion is shown to have been exercised arbitrarily.

It may be pertinent to mention here that this is not the **first time** that the superior Courts have been asked to provide answers to these

questions; on the contrary it has been a recurring issue coming before the courts time and again and unhappily there happen to be drastically divergent/conflicting views on the subject. Thus we wish to resolve the conflict so as to have a binding effect on all those concerned in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 *(the Constitution)*.

As the aforesaid propositions are common to all these matters we intend to resolve the same before examining and deciding the individual cases on their own merits.

2. Extensive arguments have been made by the learned counsel for the parties for and against the propositions which are summarized hereinbelow; their pleas/counter-pleas and the law cited in support thereof *(note: including case law researched by the Court staff)* are reflected in the reasons of this opinion. The summations of the learned counsels who have objected to the condonation of delay/exclusion of time are briefly stated below:-

(i) That Section 5 of the Act should be strictly construed and applied and that **sufficient cause** stipulated therein should not be tested on the conditions of Section 14 of the Act as it only applies to suits and not appeals; however some of the counsel have submitted that the limitations of the latter section should be referred to assess the existence of **sufficient cause**;

(ii) An appellant who approaches the wrong forum *(one lacking jurisdiction)* should not be given the premium of his own negligence; especially in cases where the institution of an appeal before the wrong forum is tainted with *mala fide* intention;

(iii) When a *lis* is initiated beyond the prescribed period of limitation a vested right is created in favour of the opposite side which cannot be obliterated by giving a premium to a delinquent litigant;

(iv) That the rule *actus curiae neminem gravabit* is a rule of administration of justice; it should not be used to favour a delinquent litigant to the prejudice of the opposite side in whose favour a vested right has been created; besides, where an appellant is unmistakably found to be negligent or lacking *bona fide*, to give him the benefit of the rule of *actus curiae neminem gravabit* would be a serious abuse of the rule which is meant for the administration of justice.

3. On the other hand, the summations of the learned counsels supporting the proposition that the appeal filed by the litigant before a wrong forum on the mistaken/wrong advice of the counsel and the subsequent entertainment of such appeal by the office of the court or the court itself justifies condonation of delay are:-

(i) That an appeal is an extension of a suit, and the entire case reopens before the appellate court, therefore, Section 14 of the Act can be resorted to for purposes of **excluding** the time spent before the forum having no jurisdiction, however, the conditions of the section have to be satisfied. Mr. Malik Muhammad Qayyum, learned ASC when specifically questioned in this regard has candidly conceded that Section 14 would not be attracted, rather, the conditions stipulated therein if satisfied should be construed to be a **sufficient cause** in terms of Section 5 *(this was also the submission of Mr. Gulzarin Kiyani, learned counsel appearing for the opposite side)*;

(ii) That if the reason for approaching the wrong forum is the wrong advice of a legal expert whom a litigating party approaches with due diligence and in good faith, therefore,

no prejudice should be caused to such litigant and delay resulting due to mistaken advice should be condoned on this account *simpliciter*;

(iii) It is the duty of the appellate court *(including its staff)* to refuse to entertain or admit an appeal when it does not fall within its pecuniary jurisdiction, but in the event of failure to do so the rule of *actus curiae neminem gravabit* would be duly attracted;

(iv) Where a court whilst exercising its discretion has condoned the delay as per Section 5 of the Act, the higher court(s) shall not interfere in such discretionary exercise of power *[note: this plea was raised by Mr. Malik Qayyum, learned ASC who has placed reliance on the following cases in this regard:-* ***Muhammad Bashir and another Vs. Province of Punjab through Collector of District Gujrat and others*** *(2003 SCMR 83),* ***P.M. Amer Vs. Qabool Muhammad Shah and others*** *(1999 SCMR 1049),* ***Mrs. Zubaida Begum Vs. Mrs. S.T. Naqvi*** *(1986 SCMR 261),* ***Lahore Development Authority Vs. Mst. Sharifan Bibi and another*** *(PLD 2010 SC 705) and* ***National Bank of Pakistan and others Vs. Shamoon Khan and others*** *(2010 SCMR 1173)]*.

4. Before considering the propositions above, it is expedient to mention certain **salient features** which have been settled over a period of time by the superior Courts for the purposes of interpretation of the law of limitation. These are:-

(i) The law of limitation is a statute of repose, designed to quieten title and to bar stale and water-logged disputes and is to be strictly complied with.[1] Statutes of limitation by their very nature are strict and inflexible. The Act does not confer a right; it only regulates the rights of the parties. Such a regulatory enactment cannot be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies are

[1] 2016 PLC (CS) 195; 2010 PLC (Labour) 104; 2007 SCMR 1446; 2003 YLR 1837 and PLD 1962 (WP) Dacca 381.

fully complied with in letter and spirit.[2] There is no scope in limitation law for any equitable or ethical construction to get over them.[3] Justice, equity and good conscience do not override the law of limitation.[4] Their object is to prevent stale demands and so they ought to be construed strictly;[5]

(ii) The hurdles of limitation cannot be crossed under the guise of any hardships or imagined inherent discretionary jurisdiction of the court.[6] Ignorance, negligence, mistake or hardship does not save limitation, nor does poverty of the parties;[7]

(iii) It is salutary to construe exceptions or exemptions to a provision in a statute of limitation rather liberally while a strict construction is enjoined as regards the main provision. For when such a provision is set up as a defence to an action, it has to be clearly seen if the case comes strictly within the ambit of the provision;[8]

(iv) There is absolutely no room for the exercise of any imagined judicial discretion vis-à-vis interpretation of a provision, whatever hardship may result from following strictly the statutory provision. There is no scope for any equity. The court cannot claim any special inherent equity jurisdiction;[9]

(v) A statute of limitation instead of being viewed in an unfavourable light, as an unjust and discreditable defence, should have received such support from courts of justice as would have made it what it was intended emphatically to be, a statute of repose.[10] It can be rightly stated that the plea of limitation cannot be deemed as an unjust or discreditable

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[2] PLD 2004 AJ&K 38.
[3] PLD 2005 Lah 129; PLD 1962 (WP) Dacca 381 and PLD 1958 (WP) Lah 936.
[4] PLD 2005 Lah 129.
[5] 2013 CLC 403; 2003 YLR 1837 and PLD 1962 (WP) Dacca 381.
[6] AIR 1940 Rang 276 (FB)
[7] PLD 2003 SC 628; 2002 PLC (CS) 526; 2002 PLC (CS) 474; PLD 2002 SC 101; 1998 PLC (CS) 1007; 1988 SCMR 1354 and 1987 PLC (CS) 200.
[8] 25 Cal 496, 503.
[9] AIR 1935 All 323.
[10] *Supra* note 1.

defence.[11] There is nothing morally wrong and there is no disparagement to the party pleading it.[12] It is not a mere technical plea as it is based on sound public policy and no one should be deprived of the right he has gained by the law.[13] It is indeed often a righteous defence.[14] The court has to only see if the defence is good in law and not if it is moral or conscientious;[15]

(vi) The intention of the Law of Limitation is not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right.[16]

(vii) The Law of Limitation is an artificial mode conceived to terminate justiciable disputes. It has therefore to be construed strictly with a leaning to benefit the suitor;[17]

(viii) Construing the Preamble and Section 5 of the Act it will be seen that the fundamental principle is to induce the claimants to be prompt in claiming rights. Unexplained delay or laches on the part of those who are expected to be aware and conscious of the legal position and who have facilities for proper legal assistance can hardly be encouraged or countenanced.[18]

5. Coming back to the issues in hand, it is desirable to reproduce the provisions of Sections 5 and 14 of the Act which read as under:-

> "***5. Extension of period in certain cases.*** *Any appeal or application for a revision or a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment*

[11] 48 Cal 110 (PC); AIR 1933 PC 230.
[12] *Ibid.*
[13] *Ibid.*
[14] AIR 1933 PC 230.
[15] 54 All 1067 (PC); AIR 1935 All 323; 56 Cal 575.
[16] 21 Cal 8, 18 (PC).
[17] AIR 1966 Pat 1 (FB).
[18] AIR 1966 Raj 213.

for the time being in force ***may be admitted after the period of limitation prescribed therefor****, when the appellant or applicant satisfies the Court that he had* ***sufficient cause*** *for not preferring the appeal or making the application within such period.*

(Emphasis supplied)

(note:- shall not be admitted unless a sufficient cause is shown)

Explanation. *The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.*

14. Exclusion of time of proceeding bona fide in Court without jurisdiction. *(1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.*

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Explanation I. *In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.*

> ***Explanation II.*** *For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.*
>
> ***Explanation III.*** *For the purposes of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."*

6. There are a very large number of judgments which have been cited before us in support of the submissions that the Courts ought not to condone delays on account of mistaken advice of counsel, on account of pendency of a *lis* before the wrong forum and/or on account of some perceived or actual mistake of the Court. The aforesaid findings are variously stated in the following judgments of this Court: **Rahim Bux Vs. Settlement Authorities and others (1968 SCMR 78)**, **Ahmad Din Vs. Mst. Rasul Bibi (1968 SCMR 843)**, **Rehmatullah and others Vs. Ulas Khan and others (1968 SCMR 975)**, **Shah Muhammad Vs. Ghulam and another (PLD 1970 SC 196)**, **Mst. Hajran Vs. Sardar Muhammad (PLD 1970 SC 287)**, **Mohiuddin Vs. Settlement and Rehabilitation Commissioner Hyderabad, Karachi and Khairpur Divisions and another (1970 SCMR 428)**, **Hakeem Abdul Rehman Vs. Noor Muhammad and another (1970 SCMR 582)**, **Province of East Pakistan Vs. Abdul Hamid Darji and others (1970 SCMR 558)**, **Fateh Ali Khan Vs. Subedar Muhammad Khan (1971 SCMR 354)**, **Muhammad Nawaz and 3 others Vs. Mst. Sakina Bibi and 3 others (1974 SCMR 223)**, **Ch. Muhammad Sharif Vs. Muhammad Ali Khan and others (1975 SCMR 259)**, **Abdul Ghani Vs. Ghulam Sarwar (PLD 1977 SC 102)**, **Mst. Walayat Khan Vs. Khalil Khan and another (PLD 1979 SC 821)**, **Khalid Farooq and 3 others Vs. Hakim Nazar Muhammad and another (1979 SCMR 52)**, **Mirza Muhammad Saeed**

Vs. Shahab-ud-Din and 8 others (PLD 1983 SC 385), **Mst. Mahmooda Begum and others Vs. Major Malik Muhammad Ishaq and others (1984 SCMR 890)**, **Raj Muhammad Vs. Mst. Chan Bibi and others (1984 SCMR 1068)**, **Rahim Bakhsh through Legal Heirs and others Vs. Mst. Pathani through Legal Heirs and others (PLD 1985 SC 324)**, **Bashir Ahmad Vs. Government of the Punjab (1985 SCMR 333)**, **Mian Aizad Bakhsh Vs. Sheikh Muhammad Afzal (1985 SCMR 1003)**, **Nek Muhammad Vs. A.C. Jhelum and others (1986 SCMR 1493)**, **Islam Din Vs. Allah Nawaz and others (1988 SCMR 2)**, **Manzoor Hussain and 2 others Vs. Muhammad Ali and another (1989 SCMR 1498)**, **Chief Administrator of Auqaf Vs. Muhammad Ramzan (PLD 1991 SC 102)**, **Ghulam Ali Vs. Akbar @ Akoor and another (PLD 1991 SC 957)**, **Muhammad Tufail Danish Vs. Deputy Director F.I.A. and another (1991 SCMR 1841)**, **Masud Ahmed and 2 others Vs. United Bank Limited (1992 SCMR 424)**, **Syed Haji Abdul Wahid and another Vs. Syed Siraj ud Din (1998 SCMR 2296)**, **Raja Karamatullah and 3 others Vs. Sardar Muhammad Aslam Sukhera (1999 SCMR 1892)**, **Idris Ahmed Rizwani Vs. Federal Public Service Commission through Secretary (2000 SCMR 1889)**, **Bashir Ahmed Vs. Muhammad Sharif and 4 others (PLD 2001 SC 228)**, **Mst. Khauda Begum and two others Vs. Mst. Yasmeen and 4 others (PLD 2001 SC 355)**, **Abdul Majeed and another Vs. Ghulam Haider and others (2001 SCMR 1254)**, **Monazah Parveen Vs. Bashir Ahmad and 6 others (2003 SCMR 1300)**, **Sheikh Muhammad Saleem Vs. Faiz Ahmad (PLD 2003 SC 628)**, **Rehman-ud-Din and another Vs. Sahibzada Jehanzeb (2004 SCMR 418)**, **Shujat Ali Vs. Muhammad Riasat and others (PLD 2006 SC 140)**, **Ghulam Qadir Vs. Ghulam Fareed and others (2006 SCMR 984)**, **Muhammad Yousuaf and others Vs. Saeen Akhtar (2007 SCMR 1485)**, **Atta**

Muhammad Vs. Maula Bakhsh and others (2007 SCMR 1446), **Lahore Development Authority Vs. Mst. Sharifan Bibi and another (PLD 2010 SC 705)**, **Dr. Syed Sibtain Raza Naqvi Vs. Hydrocarbon Development and others (2012 SCMR 377)**, **Mrs. Akram Yaseen and others Vs. Asif Yaseen and others (2013 SCMR 1099)**, **Mst. Gul Jan and others Vs. Naik Muhammad and others (PLD 2012 SC 421)**, **Dr. Pir Muhammad Khan Vs. Khuda Bakhsh and others (2015 SCMR 1243)**, and **Muhammad Wahid and another Vs. Nasrullah and another (2016 SCMR 179)**.

7. In **Shah Muhammad**'s case *(supra)* the Supreme Court refused to condone the delay with reference to Sections 5 and 14 of the Act and observed that:-

> *"……Under that provision of law time can only be excluded where proceeding has been prosecuted with due diligence in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it. It is not disputed that in the present case the appellant was pursuing his remedy before a Court of competent jurisdiction. It was on his failure to get the necessary relief that he had filed an appeal against the ex parte decree passed against him.*
>
> *……Merely because by his own choice he did not file an appeal against the original decree, it cannot be said that there is sufficient cause within the meaning of section 5 of the Limitation Act for not filing the appeal within time. The appellant was not diligent. He could file an application under Order IX, rule 13, C.P.C. and at the same time file an appeal against the original ex parte decree.* ***This aspect of the question has been considered in several decisions of the Indian High Court in pre-Partition days and the consensus opinion is that where an application***

> ***under Order IX, rule 13, C.P.C. for setting aside on ex parte decree failed on the merits, the time spent in prosecuting the proceedings cannot be deducted under section 5 for the proper time allowed for filling an appeal****……..”*
>
> *(Emphasis supplied)*

8. In the case of **Province of East Pakistan** *(supra)* the Supreme Court refused to condone the delay and on the point of sufficient cause under Section 5 of the Act, observed as under:-

> *“As to the legal aspect of the question, namely; as to what is or is not sufficient cause for the purposes of an application under section 5 of the Limitation Act, it is manifest that no hard and fast rule can be laid down nor it is desirable that this should be done. Each case has to be considered on its own facts. What may be sufficient in one case may well not be sufficient in another case, **but this much is certain that where by lapse of time a valuable right has accrued to the other side, it should not be lightly taken away**.*
>
> *(Emphasis supplied)*
>
> *This Court has furthermore repeatedly pointed out that in an application under section 5 of the Limitation Act it is the duty of the party seeking condonation to explain each day’ (sic day’s) delay, and unless this is done, the delay should not be condoned particularly, where valuable rights have accrued to the other sides (sic side).”*

Where delay was committed by the government in filing of appeal, it was the observation of the Supreme Court that:-

> *“This Court has also in several cases had occasion to point out that so far as limitation is concerned the Government*

> *cannot claim to be treated in any manner differently from an ordinary litigant, because, of the fact that the Government enjoys unusual facilities for the preparation and conduct of their cases and its resources are much larger. If in spite of these facilities the Government cannot comply with the requirements of the law of limitation, then it is for it to take steps to have that law changed and not to ask the Courts to give a different interpretation to its provisions. In this view of the matter, the High Court's decision in these two petitions is unexceptionable."*

9. In **Muhammad Nawaz**'s case *(supra)* this Court did not accept that counsel's poor advice would be a 'sufficient cause' for condonation of delay, and observed as under:-

> *"3. Even if the above explanation is to be taken at its face value, it would not constitute a sufficient cause for the condonation of long delay that has taken place in the instant case. The initial obligation was of the petitioners to enquire about the decision in their appeal, or to arrange with their counsel to inform them about the decision if it is announced in their absence. Even if it be assumed that their counsel neglected to inform them that per se would not be a sufficient ground for condonation of delay, when a valuable right has accrued to the respondents Nos. 1 to 3. We are not satisfied that the petitioners were diligent or took due care in the matter.*
>
> *4. The petition is dismissed as barred by limitation."*

10. In the case of **Ch. Muhammad Sharif** *(supra)* when considering an application for condonation of delay the High Court came to the conclusion that delay could only be condoned if the mistake was *bona fide*. The mistake was not found to be *bona fide* and wrong advice of

counsel was not accepted as a good ground for condonation of delay. This Court refused to grant leave while observing as under:-

> *"We have heard the learned counsel at length and carefully examined all the decisions referred to by him and have come to the conclusion that this is a clear case in which the learned Advocate showed gross lack of care and his failure in such a case to acquaint himself with the relevant provisions of the law relating to the jurisdiction of the Courts amounted to negligence on his part.*
>
> *The learned counsel has relied on the decision of the Privy Council in Kunwar Rejendra Bahadur Singh V. Rai Rajeshwar Bali (AIR 1937 PC 276) to support his contention that action taken "in good faith on the advice of counsel honestly given" is a sufficient cause for condoning delay. The finding in that case was that the view taken by appellants' counsel was not unreasonable and he could not be deemed to have been negligent in valuing the appeal. The facts here are altogether different. The correct value was known.*
>
> *In the case of Nazar Muhammad V. Mst. Shahzada Begum (PLD 1974 SC 22), this Court also followed the Privy Council but again that was a case in which the wrong period of limitation had been calculated even after reference to a recognized textbook on the law of limitation. There is no evidence here that the learned Advocate concerned consulted any book or law on the point."*

11. In **Abdul Ghani**'s case *(supra)* the petitioner filed an appeal before the District Court which fell within the pecuniary jurisdiction of the High Court. On return of the memorandum of appeal by the District Court, the appeal was presented before the High Court but was dismissed on the ground of limitation. This Court also dismissed the

petition without condoning the delay. While applying Section 18 of the Civil Courts Ordinance, 1962 the Court held:-

> *"There is absolutely no ambiguity about this section. Even a layman would be able to understand it without any legal assistance whatsoever. But the petitioner claims to have been advised by an Advocate and the appeal was filed by an Advocate. Therefore, as the petitioner had himself valued his claim in his suit at a sum far exceeding Rs. 25,000, it is not possible to understand how any Advocate could have advised the petitioner to file his appeal in the District Court, and we find it difficult to believe that the petitioner was misguided by legal advice, but if he was, then we have to observe with regret that the petitioner's Advocate acted with gross negligence in filing the appeal in the District Court."*

With regard to the argument that it was the respondent's fault for not objecting to the maintainability of the appeal the Court held that:-

> *"This extraordinary submission is based on the assumption that defendants are under an obligation to give advice about the manner in which claims against them are to be prosecuted. Apart from the fact that this assumption is against reason, submission is self-defeating because there cannot be different standards for plaintiffs and defendants, and if the petitioner was not at fault for filing his own appeal in the wrong Court, by the same standard, the respondent cannot be blamed for not objecting immediately to what the petitioner did."*

It was further held that such act would not constitute a **sufficient cause** in terms of Section 5 of the Act to hold that the same was beyond the

control of the parties concerned. The relevant portion of the judgment reads as follows:-

> *"In any event, the conduct of other parties cannot help the petitioner to make out sufficient cause under section 5 of the Limitation Act. It is true that this section does not define sufficient cause but the meaning of this expression is too well known to need recapitulation, and we would only refer here to the observations of Kaikaus, J. on this question in Ata Ulla v. Custodian Evacuee Property (PLD 1964 SC 236).* ***"Under section 5…there has to be a finding of sufficient cause. In pre-partition India sufficient cause had been defined as circumstances beyond the control of the party and I do not know of any case wherein this definition of sufficient cause had been rejected".*** *We re-affirm these observations and we any (sic may) explain here that the burden is on the appellant to prove that his delay in filing his appeal was on account of circumstances beyond his control, because, as observed by Sir George Rankin in Kunwar Rajendra Bahadur Singh v. Rai Rajeshwar Bali and others (AIR 1937 PC 276)…in applying section 5 (of the Limitation Act)…the analogy of section 14 (which applies only to suits) is an argument of considerable weight." Section 14 permits the exclusion of time only for proceedings "prosecuted in good faith", therefore in order to make out sufficient cause under section 5 an appellant must prove that he had acted in good faith in presenting his appeal in the wrong Court. Good faith has been defined in clause (7) of section 2 of the Limitation Act as: "'good faith': nothing shall be deemed to be done in good faith which is not done with due care and attention." Now if an appellant proves that he filed his appeal in the wrong Court despite due care and attention it means that the presentation of the appeal in the wrong Court was on account of circumstances beyond his control. No doubt, what such circumstances are must depend on the*

> *facts and circumstances of each case, and in Kunwar Rajendra Bahadur Singh's case, Sir George Rankin set aside the finding of the Chief Court that the appellant's Advocate had been very negligent in filing the appeal in the wrong Court because the facts relevant to the question of the Court in which the appeal was to be filed were very complicated. Similarly, an appellant can bring his case under section 5 if he can show that there is some ambiguity in the law governing the forum in which the appeal is to be filed. Or, to take another example, an appellant can rely on section 5, if he can show that he was misguided by the practice of the Court or by an erroneous judgment of the Court. But, in the instant case, the provisions of section 18 of the West Pakistan Civil Courts Ordinance are plain beyond any doubt and as there is also no complication whatsoever about the facts relevant to the question of the proper forum for filing the appeal, it is clear that the presentation of the appeal in the District Court was an act of gross negligence."*
>
> *(Emphasis supplied)*

In relation to the argument that the act of the court shall prejudice none, this Court held:-

> *"In order to overcome these self-induced difficulties the petitioner has tried to throw the blame on the District Court and on the respondent's Advocate.* ***Thus, for example, he has pleaded in his petition that it was the act of the District Court "which contributed towards expiry of limitation for filing appeal in the High Court".*** *We were astonished by this plea and even more by the fact that it was pressed because it is not Mr. Bilal's case that the petitioner was an infant or a lunatic whose interests the Court might have been under some duty to protect. But, according to Mr. Bilal, the petitioner had been misguided by the District Court because after admission the appeal*

> *had been transferred from the Court of the District Judge, Multan to that of an Additional District Judge, Multan, therefore, the principle actus curiae nemonim (sic neminem) gravalsit (sic gravabit) was attracted. The argument is fallacious because the transfer from the Court of the District Judge to that of an Additional District Judge was by an administrative order and because this transfer was after the petitioner had deliberately filed his appeal in the wrong Court. And, in any case, the attempt to invoke the principle actus curiae nemonim (sic neminem) gravalsit (sic gravabit) assumes that the Court was under an obligation to advise the appellant how to prosecute his remedies against the respondent, we regret to say that this assumption is against reason."*
>
> *(Emphasis supplied)*

12. In the case of **Mst. Mahmooda Begum** *(supra)* this Court while considering the question of condonation of delay on account of time consumed before a wrong forum within the purview of Section 5 of the Act and on account of wrong advice of counsel held, as under:-

> *"……the appeal fails primarily for the reason that it was not a case of ill-advice but extreme negligence on the part of the counsel, who had filed the appeal before the District Judge. A plain reading of section 18 of West Pakistan Civil Courts Ordinance, 1962, should have made it obvious to the counsel that any appeal whose valuation exceeded Rs. 25,000 should have been filed in the High Court. There was no room for any doubt as subsection (1) (a) of section 18 is so clearly worded that it is not susceptible to any other interpretation. The appeal was valued at Rs. 46,000 and, therefore, there was no room for any doubt as to the forum where it should have been presented.* ***It is a case of gross ignorance of the law on the part of the counsel and as such it cannot be regarded as an ill-advice, and for this reason if the***

***appellants have suffered they can seek redress against their counsel, but this would not provide a reason for condonation of delay**."*

(Emphasis supplied)

13. In **Syed Haji Abdul Wahid**'s case, the question of limitation in the context of approaching a wrong forum was in issue. This Court held as under:-

"15. From the preceding discussion, it emerges that the ratio decidendi in Abdul Ghani v. Ghulam Sarwar has been followed consistently. No doubt Abdul Ghani's case laid down that an advice given by the counsel against a clear provision of law would amount to gross negligence on the part of counsel and any action taken on such advice would not entitle the party to seek condonation of delay on the ground that he bonafidely acted on that advice, but the above rule laid down in Abdul Ghani's case did not exclude .from its purview condonation of delay by the Court under section 5 of the Limitation Act in a case where the appellant is able to establish that he acted in good faith in pursuing his appeal before the wrong Court, as is evident from the above quoted passage from Abdul Ghani's case. ***Therefore, notwithstanding, the fact that section 14 of Limitation Act, in terms does not apply to proceedings of an appeal, if the appellant is able to establish that he followed the remedy before a wrong forum in good faith, the Court may condone such delay in filing of the appeal treating it as 'sufficient cause' under section 5 of the Limitation Act. What would constitute 'sufficient cause' in such cases would depend on the facts and circumstances of each case. At this stage, we may mention here that in a later decision of this Court in the case of Sherin v. Fazal Muhammad (1995 SCMR 584) a Bench of this***

> ***Court consisting of 3 Hon'ble Judges, without referring to the decision in Abdul Ghani's case expressed the view on the question, whether the delay in pursuing remedy before a wrong forum visualized under section 14, which applies to suit, could be extended for condoning delay in filing the appeal under section 5 of the Limitation Act, as follows*****.....**
>
> *(Emphasis supplied)*
>
> *(Note: Paras No. 4 to 6 of the Sherin case (supra) have been quoted with approval in this case; however we shall consider/quote the Sherin decision while discussing the situation that wrong advice does justify condonation of delay).*

14. In the case reported as **Dr. Syed Sibtain Raza Naqvi** *(supra)* this Court while refusing to condone the delay held as under:-

> *"8. On perusal of section 14 of the Act, it appears that time spent in pursuing the proceedings before wrong appellate forum, cannot be excluded, for the purposes of filing of an appeal and in case appeal is barred by time the provision of section 5 of the Act can only be invoked, that too, by showing the sufficient cause.*
>
> *9. The two expressions "due diligence" and "good faith" in section 14 do not occur in section 5 of the Act which enjoins only "sufficient cause". The expressions "due diligence" and "good faith" used in section 14 of the Act cannot be equated with the expressions "sufficient cause" used in section 5 of the Act. If it were so, the Legislature could have used identical expressions in both sections particularly when "good faith" has been defined in section 2(7) of the Act. The power to condone the delay and grant an extension of time under section 5 of the Act is discretionary, whereas under section 14 of the Act, exclusion of time is mandatory on the satisfaction of the condition prescribed in it.*

> *10. The principle that appeal is continuity of original proceeding before the appellate Court, as held in the cases of* ***Sherin v. Fazal Muhammad****, (1995 SCMR 584) and* ***Tasneem Ismail v. Wafi Associates****, (2007 SCMR 1464), is of no help to the petitioner. The law of limitation takes away the rights of parties, the same must be construed liberally, but without any violation to the intent of legislature. Limitation Act is to be read as a whole and its provisions are to be construed harmoniously.*
>
> *11. On reading Section 14 of the Act along with section 2(10), it appears that legislature specifically excluded the appeal or an application from the purview of "Suit". We left no doubt in our mind that benefit of section 14 of the Act cannot be extended to exclude the time consumed in prosecuting an appeal before wrong forum having no jurisdiction, for the purposes of filing an appeal before a forum having jurisdiction."*

15. In the case of **Mst. Gul Jan** *(supra)* many cases with different facts were before this Court in which the main proposition was whether in a case where an appeal lies before this Court and no such appeal has been filed, this can Court entertain a petition seeking leave to appeal under Article 185(3) of the Constitution. It was held by this Court, as under:-

> *"We may conclude by observing that the practice of filing a petition for leave to appeal before this Court under Article 185(3) of the Constitution where an appeal is competent before this Court under Article 185(2) of the Constitution or under any statute but has become barred by time amounts to hoodwinking or deceiving the spirit as well as the express provisions of Article 185(3) of the Constitution and such practice must be brought to an end. It must be made clear to all that if an appeal competent before this*

Court has not been filed within the period of limitation prescribed for filing of the same then the only remedy available in that regard is to file a time-barred appeal and seek extension of time or condonation of delay in filing of the same in terms of rule 2 of Order XII or rule 1 of Order XXII of the Supreme Court Rules, 1980. It must also be made clear to all through this judgment that no petition for leave to appeal filed under Article 185(3) of the Constitution can be entertained by the office of this Court in any case where an appeal is competent before this Court under Article 185(2) of the Constitution or under any statute and that no such incompetent petition for leave to appeal, ***even if erroneously entertained by the office of this Court can be converted into or treated as an appeal except in the case of an incompetent petition for leave to appeal filed within the period of limitation for filing a competent appeal****. As regards the present appeals and petitions there is no denying the fact that in all these cases appeals were competent before this Court under Article 185(2) of the Constitution or under some statute but the matters had been brought to this Court in the shape of petitions for leave to appeal filed under Article 185(3) of the Constitution at a time when the remedy of appeal had become barred by time. All these petitions thus filed were, therefore, incompetent and not maintainable at the time of their institution."*

(Emphasis supplied)

16. The summary of the above case law is as under:-

(i) That condonation of delay can only be allowed within the purview of Section 5 of the Act, when a case for **sufficient cause** has been made out within the scope thereof;

(ii) Wrong advice of the counsel per se does not constitute a sufficient cause for condonation of delay;

(iii) Section 14 of the Act is not attracted to appeals but is confined to suits, etc. only; however the principles of the section, such as due diligence and good faith can be resorted to, in order to satisfy the condition of **sufficient cause** postulated by Section 5;

(iv) The rule of *actus curiae neminem gravabit* should not be extended to give benefit to the litigant who, on account of wrong advice by counsel, has approached an appellate forum having no jurisdiction.

17. We now consider various judgments cited by the counsel for the parties or researched by our office for the proposition that in the situation where a wrong forum of appeal has been approached time can be condoned; they include **Kunwar Rajendra Bahadur Singh Vs. Rai Rajeshwar Bali and others (AIR 1937 PC 276)**, **The Province of East Pakistan Vs. Muhammad Hossain Mia (PLD 1965 SC 1)**, **General Secretary, P.W.R. Union (Workshop), Lahore Vs. The Registrar, Trade Unions and others (PLD 1969 Lhr. 1080)**, **Akbar Vs. Sadiq and others (1972 SCMR 23)**, **Nazar Muhammad and another Vs. Mst. Shahzada Begum and another (PLD 1974 SC 22)**, **Raja Muhammad Ayub and others Vs. Muhammad Ijaz Khan and others (1982 SCMR 1105)**, **Muhammad Hasham Khan Vs. The Chairman, Baluchistan Service Tribunal and others (PLD 1983 SC 262)**, **Mrs. Zubaida Begum Vs. Mrs. S.T. Naqvi (1986 SCMR 261)**, **Sherin and 4 others Vs. Fazal Muhammad and 4 others (1995 SCMR 584)**, **Ali Muhammad Vs. Muhammad Shafi (PLD 1996 SC 292)**, **P.M. Amer Vs. Qabool Muhammad Shah and 4 others (1999 SCMR 1049)**, **Karachi Electric Supply Corporation Ltd Vs. Lawari and 4 others (PLD 2000 SC 94)**, **Abdul Majeed and others Vs. Hameeda Bibi and 4 others (2002 SCMR**

416), **Muhammad Bashir Vs. Province of Punjab through Collector of District Gujrat and others (2003 SCMR 83)**, **Noora through L.Rs. Vs. Ahmad (2005 SCMR 1933)**, **Mst. Bas Khana and others Vs. Muhammad Raees Khan and others (PLD 2005 Pesh 214)**, **Mst. Farah Naz Vs. Judge Family Court Sahiwal and others (PLD 2006 SC 457)**, **Abdul Majid and others Vs. Mst. Zubeda Begum and others (2007 SCMR 866)**, **House Building Finance Corporation and others Vs. Syed Muhammad Ali Gohar Zaidi (2007 PLC (C.S.) 870)**, **National Bank of Pakistan and others Vs. Shamoon Khan and others (2010 SCMR 1173)**, and **Farman Ali Vs. Muhammad Ishaq and others (PLD 2013 SC 392)**.

18. The brief facts of the case of **Kunwar Rajendra Bahadur Singh** *(supra)* are, that the appellant *(of the case)* filed an application before the Assistant Commissioner for partition which was dismissed; he brought an appeal before the District Judge valued at Rs.1000/-. The District Judge returned the memorandum of appeal for presentation to the Chief Court. The memorandum of appeal along with an application under Section 5 of the Act for condonation of delay was moved. The application was dismissed and so was the appeal as being barred by time. The Privy Council advised His Majesty that the appeal should be allowed, the order and decree of the Chief Court be set aside, and the appeal be remanded to the Chief Court for admission notwithstanding that the period of limitation was exceeded. The Privy Council in view of Sections 5 and 14 of Act, held as under:-

> *"6. The question of negligence being out of the way, their Lordships are of opinion that the facts of the present case disclose sufficient cause within the meaning of Section 5,*

Limitation Act. ***They are of opinion that in applying Section 5 to such a case as the present, the analogy of Section 14 (which applies only to suits) is an argument of considerable weight. Mistaken advice given by a legal practitioner may in the circumstances of a particular case give rise to sufficient cause within the section though there is certainly no general doctrine which saves parties from the results of wrong advice. In the circumstances of this case the respondents had very little reason to complain of the delay and the bona fides and diligence of the appellant cannot be impugned****."*

(Emphasis supplied)

19. In **Nazar Muhammad**'s case *(supra)* this Court held that:-

"The explanation of the respondent is that she was given mistaken advice by a legal practitioner and, therefore, it was a sufficient ground for condoning the delay. In support of the respondents' contention, Mr. Raja Muhammad Anwar, learned counsel for the respondents, has relied on a decision of the Privy Council in Kumar Rajendra Bahadur Singh v. Rai Rajeshwar Bali and others (AIR 1937 PC 276). It was held in that case that a mistaken advice by a counsel may be considered to be a sufficient ground within section 5 of the Limitation Act for condoning the delay. ***There is no counter-affidavit by the appellants. In these circumstances, we would accept the explanation of the respondents and hold that there was sufficient ground to condone the delay under section 5 of the Limitation Act. Accordingly, the delay is condoned and appeal is held to be within time****."*

(Emphasis supplied)

20. In the judgment rendered in the case of **Muhammad Hasham Khan** *(supra)* a four member bench of this Court condoned the delay in filing an appeal:-

> *"The legal question regarding application of section 5 of Limitation Act where section 14 thereof did not apply in terms is not difficult to understand in cases like the present one. No doubt it was held in Shah Muhammad v. Ghulam and another (1) that section 14 of the Limitation Act nor section 5 thereof, could be attracted in that case ; (sic case;) which involved filing of an appeal under section 96 of the C.P.C. as also an application for setting aside an ex parte decree under Order IX, rule 13 of C.P.C.* ***But it cannot be said that section 5 of the Limitation Act did not apply because section 14 was not in terms applicable to a particular proceedings. The underlying principles would not ordinarily be excluded when considering a case under section 5 of the Limitation Act****……."*
>
> *(Emphasis supplied)*

21. The brief facts of **Sherin**'s case *(supra)* are that the respondents sued the appellants for declaration and permanent injunction and alternative relief for possession was also prayed for. The suit was decreed on 21.2.1984. The appellants preferred an appeal in the before the District Judge which was returned on 1.12.1985, for presentation before the High Court, as the appeal was found to be beyond the pecuniary jurisdiction of the District Judge. It was re-filed in the High Court and dismissed through the judgment dated 26.6.1989 as barred by time. This Court framed the following proposition at the time of granting leave:-

> *"What should be the standard of care and diligence required of appellants when preferring their appeals and whether any duty is cast on the Court officials entertaining the appeals to record objections as regards defect of jurisdiction etc., and, if so, within what period of time."*

This Court discussed the criteria of "due diligence" under Section 14 of the Act and keeping in view the illiteracy of the appellant and non-return of appeal by the Court within a reasonable time held that:-

> *4. The appellants' case is that they entrusted the case to their learned counsel, who after completion of the file, instituted the same in the Court of the learned District Judge; that the appellants themselves were not posted with the knowledge of the provisions of law as to the pecuniary jurisdiction of the District Judge to entertain the appeal; and they wholly depended on their counsel. The delay has been thus, sought to be excused on the plea that the appeal was instituted in the District Court on the mistaken advice of the counsel. In order to plead that the latter was not negligent, it has been asserted that the value of the suit for the purposes of the court-fee and jurisdiction was neither incorporated in the decree sheet nor explicitly shown in the judgment of the trial Court. Conversely, the learned counsel for the respondents has dubbed it a case of gross negligence on the part of the appellants and their counsel, and added that the mistaken advice of the counsel cannot furnish a good ground for condonation of delay.*
>
> *5. Diligence is a state of human conduct. What should be the standard for assessing the behaviour of an appellant to style him as diligent. Because of fluidity of the notion of diligence, it is difficult to set up a precise yardstick. Whether or not litigant has acted diligently and with care, would differ from case to case. Speaking broadly, a person may be said to have acted diligently, when he has informed*

himself of all relevant factors, taken all obvious steps and precautions, characterized by a degree of effort, as in a given situation, a reasonable person would do. But, the epithet of "reasonable", opens wide the measure of application of this yardstick, on the factual plane, for the word "reasonable" is not susceptible of any precise definition. Etymologically, it signifies according to reason, which expression itself is open to difference of opinion. Whether or not a person has acted diligently, in ultimate analysis, would depend on the circumstances of each case and cannot be determined on the foundation of any judicial syllogism.

6. The criterion of "due diligence" for enlargement of time is prescribed by section 14 of the Limitation Act, which upon its terms applies only to the suits and applications and not to the appeals. On the other hand section 5 is applicable to the appeals but it does not apply to suits. The question of condonation of delay, therefore, has to be examined on the basis of section 5 and not section 14 of the Limitation Act. Not unoften, while examining the question of condonation of delay, in filing the appeal, the Courts have been invoking the principles underlying section 14 of the Act. The High Court has declined to condone the delay entirely on the touchstone of section 14. It is, however, to be remembered that expression "due diligence" and "good faith" appearing in section 14 do not figure in section 5. The condition prescribed in the latter section for its applicability is "sufficient cause" but what is sufficient cause is not capable of connotation, with exactitude and would differ from case to case. We may observe that filing of appeal in a wrong Court on account of mistaken advice tendered by the counsel canvassed on behalf of the appellants for condonation of delay by itself would not attract section 5 but when the litigant and the counsel have acted with due care and caution and their conduct does not smack of negligence, the institution of the appeal in the

wrong forum may constitute a "sufficient case" (sic cause) within the meaning of section 5 for condonation of the delay."

About the act of the Court while considering the quantum of delay it was held:-

"14. The stage is now set down to evaluate the effect of the learned District Judge's failure in returning the memorandum of appeal to the appellants with reasonable dispatch. It is correct that the appellants themselves were at fault, in filing the appeal in the District Court, which was not possessed of the pecuniary jurisdiction to hear it. But, let the appellants' mistake be there, a searching question needs to be asked had the learned District Judge, no reason to look into the existence or otherwise of the jurisdictional facts upon which the entertaining of the appeal by him was dependent, though not in depth, but at least prima facie; through a preliminary enquiry confined only to the cursory examination of the record before him. We are unable to show him any indulgence, in this regard. We are sure had he glanced through the record, the agony of the appellants would not have prolonged. In Hari Ram v. Akbar Hussain (ILR 29 All. 749) a Full Bench of the Allahabad High Court had the occasion to adjudicate upon the defendants' objection in a pre-emption suit that mistake in court-fee by a party is not covered by section 28 of the Court Fees Act, 1870, and it applied only when a document not properly stamped, was received and used by the Court or Office by mistake or inadvertence. The objection was repelled with the observations which are quite instructive:--

> *"The mistake may in its origin be the mistake of the plaintiff; by the time the plaint has been registered, the mistake has become the mistake of the Court. If the Court or the Munsarim discovered the plaintiff's*

> *mistake before registration of the plaint, the plaint would at once be rejected under section 54 of the Code of Civil Procedure and never registered at all."*
>
> ***We feel that omission on the part of learned District Judge to take timely action is the major cause of refiling of the appeal by the appellants, in the High Court, out of time. They have been the victim of the act of the Court which furnishes "sufficient cause" under section 5 of the Limitation Act, for condonation of delay. The fact that after receiving the memorandum of appeal from the District Court, some time was consumed by the appellants, in presenting it to the High Court, in the circumstances of the case is inconsequential. We are, therefore, inclined to condone the delay in presenting the memorandum of appeal to the High Court.****"*
>
> *(Emphasis supplied)*

22. In the case of **Karachi Electric Supply Corporation Ltd** *(supra)* the brief facts are that the suit which was valued at more than Rs.50,000/-, was decreed. An appeal was filed before the District Judge. Ultimately, the memorandum of appeal was returned and was presented before the High Court, which was dismissed on the point of limitation. This Court condoned the delay and while analysing Sections 5 and 14 of the Act held as under:-

> *"4. The view taken by this Court that, despite section 14 of the Limitation Act, if appellant is able to establish that he followed the remedy before a wrong forum in good faith with due care and caution, the Court may condone such delay in filing of the appeal treating it as sufficient cause under section 5 of the Limitation Act is confirmed,* ***but we***

> ***may also reiterate that filing of an appeal in a wrong Court on account of mistaken advice tendered by the counsel for condonation of delay by itself would not attract section 5 as held in Sherin v. Fazal Muhammad (supra)****."*
>
> *(Emphasis supplied)*

On the point of mistaken advice of the counsel, it was held by this Court, as under:-

> *"This Court made it clear in the case of Sherin v. Fazal Muhammad (supra) that filing of an appeal in a wrong Court on account of mistaken advice tendered by the counsel canvassed on behalf of the appellant for condonation of delay by itself would not attract section 5 of the Limitation Act, but when the litigant and the counsel have acted with due care and caution and their conduct does not smack of negligence, the institution of the appeal in the wrong forum may constitute sufficient cause within the meaning of section 5 for condonation of delay."*

23. In **Abdul Majid**'s case *(supra)* the question involved was whether the time spent in filing and pursuing a review petition constituted a "sufficient cause" for condonation of delay in filing an appeal. This Court discussed "sufficient cause" and observed that:-

> *"The existence of "sufficient cause" is sine qua non for condonation of delay. Insofar as 'sufficient cause" is concerned neither it can be defined precisely nor a specific yardstick can be fixed for its determination as it varies from case to case. It can, however, be said with certainty that every cause for condonation of delay cannot be equated with that of "sufficient cause" which in our view amounts to*

> *cogent reasoning, convincing justification and satisfactory explanation."*

The Court considered the criterion of "due diligence" as elaborated in **Sherin**'s case *(supra)* with reference to Sections 5 and 14 of the Act and held as under:-

> *"The case in hand has been examined on the touchstone of the criterion as mentioned hereinabove and we are of the view that since valuable rights have been accrued in favour of respondents it cannot be snatched on the ground that a review petition was filed in good faith as appeal could have been filed conveniently. In other words the respondents should not be deprived of the valuable rights which they have acquired due to the laches and negligence of the appellants. In this regard we are fortified by the dictum as laid down in Rehmatullah v. Ulas Khan 1968 SCMR 975; Abdul Hamid v. Chief Settlement Commissioner, Lahore 1968 SCMR 120; Rahim Bux v. Settlement Authorities 1968 SCMR 78 and Ahmad Din v. Mst. Rasool Bibi 1968 SCMR 843."*

24. In the case of **House Building Finance Corporation** with reference to the jurisdiction of a service tribunal to condone delay and the applicability of Sections 5 and 14 of the Act, it was observed by this Court as under:-

> *"10. We have given our anxious thought to the submission of the learned counsel. Technically speaking, he may be correct that the provisions of section 14 (ibid) are restricted to suits, the fact remains that the broad principles of this provision can always be extended to proceedings of civil nature before a Court or Tribunal with a view to secure the ends of justice and to suppress the mischief.*

> *…….In any event, the Tribunal having condoned the delay by exercise of its discretion, this Court is always slow and reluctant to interfere with the exercise of discretion in the absence of extraordinary circumstances. We would, therefore, repel the contention of the learned counsel for the Corporation that appeal preferred before the Tribunal should have been dismissed as barred by time."*

25. The summary of the above case law is:

(i) In some of the judgments, the appeal has been treated as continuation of the suit and it has been held that the provisions of Section 14 *ibid* would be attracted *per se*;

(ii) In another sub-set of these judgments it has been held that though section 14 *ibid* would not apply *per se* but the principles prescribed therein would be taken into account by the court for the purposes of determining **sufficient cause** in terms of Section 5 of the Act;

(iii) Another view if that the institution of the appeal before a wrong forum may constitute **sufficient cause** on the touchstone of Section 5, independent of Section 14;

(iv) On account of entertainment of appeal by the court staff or where the court itself entertains the same, issues pre-admission notice(s) or admits it for regular hearing, the rule of *actus curiae neminem gravabit* shall be attracted and on this score the time spent before the wrong appellate forum shall be condoned.

26. We now move on to consider judgments from the Indian jurisdiction. In the case of **Ramlal and anothers Vs. Rewa Coalfields**

Ltd. (AIR 1962 SC 361) while expressing its view on applications made under Section 14 of the Act held as under:-

> *"In dealing with such applications the Court is called upon* ***to consider the effect of the combined provisions of Sections 5 and 14****. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of S. 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under Section 5 without reference to S. 14.*
>
> *(Emphasis supplied)*

27. The question involved in the judgment reported as **Mata Din Vs. A. Narayanan (AIR 1970 SC 1953)** was whether delay can be condoned under Section 5 of the Act on the ground of mistake of counsel. The Supreme Court answered the said question in the following terms:-

> *"The law is settled that mistake of counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way."*

28. In the judgment reported as **State of Kerala Vs. Krishna Kurup Madhava Kurup (AIR 1971 Ker 211)** the High Court of Kerala while referring to **Mata Din**'s case *(supra)* held:-

> *"I am of the view that legal advice given by the members of the legal profession may sometimes be wrong even as pronouncement on questions of law by courts are sometimes wrong. An amount of latitude is expected in such cases for, to err is human and lay men, as litigants are, may legitimately lean on expert counsel in legal as in other departments, without probing the professional competence of the advice. The court must of course, see whether, in such cases there is any taint of mala fides or element of recklessness or ruse. If neither is present, legal advice honestly sought and actually given, must be treated as sufficient cause when an application under Section 5 of the Limitation Act is being considered. The State has not acted improperly in relying on its legal advisors."*

29. The case of **M/s. Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and others (AIR 1979 SC 1666)** entailed the facts in that the petitioner filed an appeal before the High Court beyond the period of limitation due to mistake in calculation of the period of limitation by the petitioner's counsel. The Indian Supreme Court while citing with approval the view expressed in the case of **State of Kerala** *(supra)* held that:-

> *"A company relies on its Legal Adviser (sic Advisor) and the Manager's expertise is in company management and not in law. There is no particular reason why when a company or other person retains a lawyer to advise it or him on legal affairs reliance should not be placed on such counsel. Of course, if there is gross delay too patent even for layman or if there is incomprehensible indifference the shield of legal opinion may still be vulnerable."*

30. In the judgment reported as **Badlu and another Vs. Shiv Charan and others [(1980) 4 SCC 401]** the Supreme Court was of the following view:-

> *"There could be no doubt that if the appellants filed an appeal before the Additional District Judge due to a mistake of law or fact resulting from a bona fide but mistaken advice given to them by their lawyer, this would be a good ground for condoning the delay. Moreover, it is well settled that if a litigant is pursuing a bona fide civil proceeding with due diligence and in good faith in any appeal or revision he is entitled to the exclusion of the time taken in such proceeding. The combined effect of Sections 5 and 14 of the Limitation Act would, therefore, undoubtedly entitle the appellants to exclude the time taken by them while the appeal was pending before the Additional District Judge."*

31. In the case of **Ghasi Ram and others Vs. Chait Ram Saini and others [(1998) 6 SCC 200]** the Supreme Court held that:-

> *"No doubt, when a party proceeds contrary to a clearly expressed provision of law, it cannot be regarded as prosecuting the other civil proceeding in good faith. It is based on sound principle of law. But the said rule cannot be enforced in rigidity in every case. Each case has to be judged on its own merits……If, on examining the facts, it is found that there was no lack of due care, there is no reason why the plaintiff-appellant should not be accorded the benefits of Section 14 of the Act. Does the interest of justice demand that the plaintiff should be refused the benefit of Section 14 of the Act on account of the negligence on the part of his counsel, ill-advising him to file a revision instead of filing a fresh suit? An illiterate litigant cannot be made to suffer when he is ill-advised by his counsel."*

32. In **Consolidated Engineering Enterprises Vs. Principle Secretary, Irrigation Department and others [(2008) 7 SCC 167]** the Supreme Court held:-

> *"While considering the provision of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity.……The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or (sic of) law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded."*

33. In the case of **J. Kumaradasan Nair & Anr. Vs. IRIC Sohan & Ors. (AIR 2009 SC 1333)** the Supreme Court while referring to the cases of **Ghasi Ram** *(supra)* and **Consolidated Engineering Enterprises** *(supra)* held as follows:-

> *"12. The question which arises for consideration is as to whether only because a mistake has been committed by or*

on behalf of the appellants in approaching the appropriate forum for ventilating their grievances, the same would mean that the provision of sub-section (2) of Section 14 of the Limitation Act, which is otherwise available, should not be taken into consideration at all. The answer to the said question must be rendered in the negative. The provisions contained in Sections 5 and 14 of the Limitation Act are meant for grant of relief where a person has committed some mistake.

The provisions of Sections 5 and 14 of the Limitation Act alike should, thus, be applied in a broad-based manner. When sub-section (2) of Section 14 of the Limitation Act per se is not applicable, the same would not mean that the principles akin thereto would not be applied. Otherwise, the provisions of Section 5 of the Limitation Act would apply. There cannot be any doubt whatsoever that the same would be applicable to a case of this nature.

13. There cannot furthermore be any doubt whatsoever that having regard to the definition of 'suit' as contained in Section 2(l) of the Limitation Act, a revision application will not answer the said description. ***But, although the provisions of Section 14 of the Limitation Act per se are not applicable, in our opinion, the principles thereof would be applicable for the purpose of condonation of delay in filing an appeal or a revision application in terms of Section 5 thereof.****"*

(Emphasis supplied)

34. Having discussed in detail the case law pertaining to the propositions at hand from the sub-continent, we proceed to a resolution of the said propositions.

Question No.1:- Whether Section 14 of the Act applies to appeals and if not, whether the principles enshrined therein (Section 14) can be made applicable while considering if a sufficient cause has been made out under Section 5 of the Act.

35. In the preponderance of the cases cited above it has been categorically held that the application of Section 14 *ibid* is restricted to suits and the provision shall not be attracted to appeals. However the ratio of some cases is that because an appeal is the continuation of a suit therefore on the basis thereof the section can be extended to appeals. But there are catena of judgments *(which are cited by both the sides and also researched by our office)* propounding the view that although Section 14 has no direct application to appeals the principles enshrined therein can be taken into consideration by the courts while deciding whether a **sufficient cause** for condonation of delay has been established in terms of Section 5. As per the salutary rule of interpretation of statutes, for construing a provision/section the ordinary dictionary meaning should be assigned to a word/expression appearing therein; however if such word/expression has been defined in the statute itself it should be given the same restrictive meaning. From the word the "**suit**" which appears in Section 14, it is abundantly clear that the said section applies to suits and there is no mention of appeal or revision etc. "**Suit**" has been defined in Section 2(10) of the Act *(definition clause)* as:-

> *"**2(10)** "suit" does not include an appeal or an application:"*

Thus from a plain reading there is no ambiguity that Section 14 is exclusively and solely restricted to suits and suits alone. If it is taken to apply to appeals also, this would be tantamount to reading into the

section the word "appeal" which does not appear in the said section and such a reading would be contrary to the definition of the word "suit" in the statute. It is not permissible in law to defeat the express provisions of law by resorting to any rule of interpretation which would have the convoluted effect of rendering an appeal a continuation of the suit for the purposes of attracting the application of Section 14. Besides as per the rule of *casus omissus*, the courts are not entitled to read words into an Act of Parliament unless clear reasons for it are found within the four corners of the Act itself.[19] In the instant case we do not find any such reasons. It may pertinent to state here that while referring to Section 2(10) *ibid* it was held in the judgment of this Court reported as **Dr. Syed Sibtain Raza Naqvi** *(supra)*, that:-

> *"11. On reading Section 14 of the Act along with section 2(1), it appears that legislature specifically excluded the appeal or an application from the purview of "Suit". We left no doubt in our mind that benefit of section 14 of the Act cannot be extended to exclude the time consumed in prosecuting an appeal before wrong forum having no jurisdiction, for the purposes of filing an appeal before a forum having jurisdiction."*

This is an apt expression of law and the judgments of this Court which provide to the contrary *(that the provisions of Section 14* ***are*** *applicable to appeals)* are *per incuriam* because in none of those cases was Section 2(10) *ibid* noticed or its effect considered. Thus our candid and firm opinion is that the application of Section 14 is restricted to suits only and has no direct and independent application to cases where an appeal has been filed before a wrong forum.

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[19] (1910) 79 LJKB 955 and AIR 1980 SC 485.

36. Coming to the second part of this question; whether the principles of Section 14 *ibid* can be resorted to for the purposes of determining **sufficient cause**. We have given due and thoughtful consideration to all three views and are of the opinion that for the purposes of determining whether **sufficient cause** for condonation of delay is made out, no hard and fast rule can be laid down; there cannot and should not be a simple test for determining the same. The establishing of **sufficient cause** is not amenable to mathematical formulae. Courts are called upon in individual cases to apply their judicial faculties to the facts placed before them and weigh the same in order to decide whether that ephemeral threshold has been crossed which means that the petitioner has convincingly established sufficient cause for condonation of delay. This is the reason that in the precedent case law, the superior courts have held that it would be unwise and unadvisable to state for all times to come that what may or may not constitute a sufficient cause; each case ought to be decided on its own merits vis-à-vis the plea of **sufficient cause**. For the purposes of determining whether in a given case sufficient cause has been made out when an appeal has been filed before a wrong forum, there does not seem to be any bar in law that the conditions or the limitation prescribed by Section 14 *ibid* cannot be looked into. However as stated later, while attending to question No.2, the conditions laid down in the section must be satisfied and established on the record. Mr. Gulzarin Kiyani also adopted this position and he has relied upon the case of **Ramlal, Motilal and Chhotelal** *(supra)* in this regard. Mr. Malik Muhammad Qayyum appearing for the other side which pleaded in favour of the proposition that time should not be condoned, has refrained from adopting the position that the principles of Section 14 cannot be resorted to at all.

Only Mr. Munir Piracha has adopted such a stance but we are not persuaded to agree with him for the reason that the term sufficient cause has to be given the widest possible amplitude and in so doing the conditions/principles of Section 14 *ibid* cannot be left out.

Question No.2:- Whether the institution and the pendency of the appeal on the wrong advice of the counsel before a wrong forum i.e. one lacking jurisdiction constitutes a sufficient cause for condonation of delay in terms of Section 5 supra.

37. The purpose of the laws of limitation is to establish certainty in the affairs of men, to bring repose and to bring an end to litigation after a certain time period has expired from accrual of an actionable right. Both Sections 5 and 14 of the Act are exceptions to the laws of limitation. A person claiming under the aforesaid exceptions must establish that he or she is not disentitled to the discretionary relief which may be awarded by the Court. Therefore a claimant seeking condonation of delay must explain the delay of each and every day to the satisfaction of the Court, establish that the delay was caused by reasons beyond the person's *(or counsel's)* control and that he was not indolent, negligent or careless in initiating and pursuing the actionable right which had accrued in his favour. The "borrowed" applicability of the provisions of Section 14, where its principles are taken into account to set the standard for **sufficient cause**, proceeds on the conditions precedent of **due diligence** and **good faith** which must be present before the court grants condonation of delay on the basis of time spent before wrong fora; even if such principles are not taken into consideration the court is not supposed to exercise its discretion in any arbitrary, whimsical and fanciful manner but has to see if a case was made out by the appellant which prevented and precluded him from approaching the right forum of

appeal. The overwhelming case law cited in the earlier part of this opinion concludes that the institution and the pendency of an appeal before a wrong forum on counsel's wrong advice i.e. one having no jurisdiction does not constitute a sufficient cause for condonation of delay in terms of Section 5 of the Act, but there is considerable case law that supports the contrary view. In my opinion, the gulf betwixt the divergent views must be bridged by employing proportionality and balancing. It can neither be held that condonation is absolutely ruled out in such a situation nor that the appellant shall be entitled to condonation as a matter of course and right, rather the Court must look into the facts and circumstances of each case as to whether sufficient cause has been made out. Because any exercise of discretionary jurisdiction in favour of a person seeking relaxation of the application of the laws of limitation as of right etc. would be prejudicial to the interests of the respondent. A valuable vested right accrues in favour of the respondent the moment a relevant period of limitation expires in that the respondent is then free from the hanging sword of an actionable claim. In order to wrest away this valuable right from a respondent the person seeking condonation of delay must establish **sufficient cause**. However, sufficient cause is a term wide enough to encompass within it the principles enshrined in Section 14 of the Act or indeed independent thereto. Time spent pursuing an appeal before a wrong forum, in good faith and with due diligence ought in our view to constitute sufficient cause for condonation of delay. But the act of approaching a wrong forum must be accounted for: it should be established that due to some honest, *bona fide* and genuine ambiguity in the law or in fact, a party or his counsel was led astray in terms of approaching a wrong forum. Mere incompetence of the counsel, inadvertence, negligence or ignorance of

law attributable to him and/or overlooking of the record by the counsel cannot constitute sufficient cause *ipso facto*, but the factor(s) which misled the legal counsel, including any ambiguity in the law, causing him to file the appeal before the wrong forum must be indicated. Mere wrong advice of counsel is not an adequate ground *per se* to constitute sufficient cause because if this rule is accepted, the centuries tested rule that ignorance of law is no excuse would stand violated. Besides, the above factors which caused ambiguity and misled the appellant *(or his counsel as the case may be)* have to be stated with clarity and precision in the application for condonation of delay and proved on the record.

38. We are cognizant of the fact that a client is at a disadvantage with reference to a counsel on account of asymmetric information. There may be instances where there is a different period of limitation applicable to different fora of appeal, and an appellant whose appeal is time barred before an appropriate forum may instead deliberately approach another forum *(knowing it to be the wrong forum)* in order to lay claim that time spent before a wrong forum ought to be condoned on account of the fact that appellant had approached it *(forum)* on the advice of counsel. All Courts must keep these considerations in mind when deciding whether or not delay caused by virtue of alleged wrong advice by counsel should be condoned. Though legal counsel are professionals of some learning who are required to be *au fait* with the basics of law in terms of where to file an action, we are deeply conscious of the fact that at times certain counsel may unwittingly mislead litigants. Poor advice by a counsel may well cause hardship to a litigant and compromise his ability to seek redress in law. But hardship caused to a person on account of poor advice of counsel does not constitute a sufficient cause for condonation of delay *per se*. Courts must insist that applications for condonation of

delay must specify with particularity as to what factors misled the counsel and gave him cause to form his unfortunate opinion with respect to the *(wrong)* forum adopted and thereafter the said factors must be proved on record. It is then for the court to decide if, on the basis of such factors, sufficient cause has been made out or not. A case in point which could possibly constitute sufficient cause is where whilst drawing the decree, the trial court on account of some clerical inadvertence/omission gives a valuation different from the actual valuation for the purposes of appeal, due to which a counsel is misled into believing that the appeal should be filed in the court as per the valuation in the decree sheet, which is in fact incorrect.

Therefore we are fortified in our view that mistaken advice of counsel does not constitute a sufficient cause for condonation of delay as a matter of course and routine and/or is automatic and *per se*, rather as mentioned above, the appellant has to specify the reasons with clarity and precision which prevailed with the counsel and led him to commit the mistake and such application must also be supported by an affidavit.

Question No.3:- Where an appeal which has been entertained by the staff of the court or the court itself which has no pecuniary jurisdiction and is ultimately returned to the appellant or is dismissed, whether this protects the appellant from the bar of limitation and/or constitutes a sufficient cause for the condonation of delay on the principle of actus curiae neminem gravabit.

39. The noted maxim which connotes "**an act of the court shall prejudice no man**" is founded upon justice and good sense; and affords a safe and certain guide for the administration of law and justice. It is meant to promote and ensure that the ends of justice are met; it

prescribes that no harm and injury to the rights and the interest of the litigants before the court shall be caused by the act or omission of the court. This rule of administration of justice is meant for the benefit of both sides of litigants before the court and it would be illogical to conceive that the rule would or should be applied for the advantage of one litigant to the prejudice and disadvantage of the other. It is the duty of the court to act as a neutral arbiter between the parties and to provide justice to them through strict adherence to law and keeping in mind the facts of each case. The rule is neither meant to provide a premium to the negligent litigant who finds himself on the wrong side of limitation for unfounded reasons and nor to impair the rights of the other side. The principles of proportionality and balancing have to be kept at the forefront by the court whilst applying this rule. The Court must see what fault, if any, has been committed by the court on account of which a litigant has been made to suffer; then the court must consider whether the benefit of the rule can or should be extended to a negligent litigant who has failed to make out a sufficient cause in terms of Section 5 of the Act as explained above. In our candid opinion the principle *actus curiae neminem gravabit* has no application where a litigant approaches a wrong forum and such appeal is entertained by the staff of the court or by the court or even admitted to regular hearing. Thus no condonation of delay can be availed by the appellant on the basis of this principle.

Question No.4:- Whether the discretion exercised by the courts below in condoning the delay cannot be interfered with by the higher court unless the discretion is shown to have been exercised arbitrarily.

40. Discretion exercised by a court below is not open to interference by a higher court **unless** it has been exercised arbitrarily. In

the case of **Muhammad Bashir** *(supra)* this Court upheld the condonation of delay by the High Court in terms of Section 5 of the Act in the following terms:-

> *"On a careful consideration of the pros and cons of the controversy between the parties and in-depth consideration of the submissions advanced at the Bar, we are firmly of the view that exercise of discretion in the case in hand does not suffer from any inherent defect of law, arbitrariness, lack of jurisdiction or acting on surmises and conjectures. Suffice it to point out that the High Court was fully satisfied with the sufficiency of cause shown by the respondents for condonation of delay for vital and sound reasons. We are, therefore, not inclined to interfere with the exercise of discretion by the High Court, which is neither illegal nor unreasonable or against the settled norms of jurisprudence.*
>
> *For these reasons, this appeal fails and is hereby dismissed."*

Similarly in the case of **Province of East Pakistan** *(supra)* this Court held:-

> *"……..It lies, in the discretion of the High Court to condone or not to condone the delay under section 5 of the Limitation Act. With such a discretionary order this Court does not ordinarily interfere unless it is satisfied that the discretion* ***has been exercised arbitrarily, whimsically or perversely or in such a manner as to divert the law into wrong channels****……."*
>
> *[Emphasis added]*

41. We find ourselves in complete agreement with such statements of law. In the exercise of its discretionary power the court is

not empowered to act upon whim and caprice: rather the discretion of the court is circumscribed by the law, recognized norms of justice, fairplay, equity, logic, rationality and reasonableness. Where the Court has passed an order in exercise of its discretion by condoning the delay, on the basis of **sufficient cause** which has been made out, it does not behove a superior court to interfere in the matter, however the unbridled, arbitrary and perverse exercise of discretion does not render it immune to the scrutiny and correction by the superior court; thus where no sufficient cause on record has been made out yet the discretion for the condonation of delay is exercised subjectively and whimsically it is the duty of the superior court to rectify the defect in the exercise of discretion. Such duty is duly mandated by the provisions of Section 3 of the Act.

42. Having answered the legal propositions involved in the matter, we now examine each case on the touchstone of our answers to the propositions.

Civil Appeal No.2564/2001

43. The relevant facts of this case are that the predecessors-in-interest of the appellants, namely Khushi Muhammad and Muhammad Ashiq *(defendants in the suit)* purchased the suit property through a registered sale deed dated 10.5.1976 from Mst. Haleema Begum *(vendor)* for consideration of Rs.100,000/-. The predecessor-in-interest of the respondents, Allah Din *(plaintiff in the suit)* filed a suit against Khushi Muhammad etc. for possession through pre-emption on 11.5.1977 in the Civil Court, being an owner in the estate. The plaintiff contended that the sale actually took place against a consideration of Rs.90,000/- but it was shown as Rs.100,000/- in the sale deed to frustrate his right of pre-

emption. Moreover, the suit for the purposes of pecuniary jurisdiction was valued at Rs.90,000/-. The defendants filed a written statement wherein they claimed to have a superior right of pre-emption, being tenants of the suit land. After framing of issues and recording of evidence, the suit was dismissed by the learned Trial Court on 18.2.1985 on the ground that the plaintiff had failed to establish a superior right of pre-emption. The appeal filed by the plaintiff before the District Court on *(or about)* 25.3.1985 was accepted by the Appellate Court *vide* judgment and decree dated 7.9.1985 and the suit of the respondent was decreed. The defendants filed a regular second appeal *(RSA)* on 14.9.1985 before the learned High Court which was accepted *vide* judgment dated 23.12.1992 with the observation that the Additional District Judge was not vested with the pecuniary jurisdiction to decide the matter and it was directed that the memorandum of appeal which was originally filed on 25.3.1985 be returned to the plaintiff by the learned Additional District Judge to be presented before the proper forum. Pursuant to the judgment dated 23.12.1992, the memorandum of appeal was returned to the respondent on 2.2.1993 by the Court of the Additional District Judge. The plaintiff resubmitted the same before the District Judge on the same day i.e. 2.2.1993, because during the pendency of the appeal, on 14.6.1986 Section 18(1)(a) of the Civil Courts Ordinance, 1962 *(Ordinance)* was amended and the pecuniary jurisdiction of the District Court was enhanced from Rs.50,000/- to Rs.200,000/- and it was in this background that the appeal was again entertained by the District Court. This fresh filing of the appeal was supported by an application under Sections 5 and 14 of the Act for condonation of delay. Meanwhile, the respondents *(legal heirs of Allah Din, the plaintiff)* also filed a petition challenging the order of the learned High Court dated 23.12.1992 before this Court

which *(petition)* was converted into Civil Appeal No.734 of 1993 and ultimately dismissed on 21.4.1998 with the observation that the judgment of the learned High Court was in accordance with law. Thereafter, the District Court accepted the application for condonation of delay on 6.11.1999 in the following terms:-

> *"5. The technicalities and omission on the part of the Court and the parties themselves laboring under wrong impression about jurisdiction until award of first appellate decree by the Court of District Judge, are to justify the sufficient cause as enunciated by Section 5 of the Limitation Act. For this reliance can be placed upon PLD 1998 Lahore page 503 and 1995 SCMR page 584. The application is granted and the appeal is considered within time."*

Aggrieved of the above order, the appellants filed a civil revision before the learned High Court which *(revision)* was dismissed *vide* judgment dated 25.6.2001 *inter alia* on the ground that the respondents were prosecuting their case with due diligence, in good faith and were entitled to condonation of delay; besides, the appeal was filed on the same day that it was returned i.e. 2.2.1993. The appellants challenged this order in C.P. No.2127/2001 *(now C.A.2564/2001)* in which leave was granted on 23.11.2001 to consider whether the respondents were entitled to seek condonation on account of the time spent before the wrong forum under Section 14 of the Act and if not, whether a case for condonation of delay in terms of Section 5 of the Act had been made out.

44. Mr. Muhammad Ibrahim Satti, learned counsel for the appellants has made reference to the judgment of this Court dated 21.4.1998 passed in Civil Appeal No.734/1994 and stated that the respondents' plea that sufficient cause has been made out was

conclusively discarded by this Court and that such decision operates as *res judicata* between the parties. He submitted that the plaintiff *(predecessor-in-interest of the respondents)* had himself valued the suit for the purposes of jurisdiction at Rs.90,000/- and this jurisdictional value also appeared in the decree sheet. Consequently, the appeal initiated before the learned District Judge was before a wrong forum, lacking pecuniary jurisdiction. No factors could be said to have misled the respondents' counsel to file the appeal before a wrong forum.

45. On the contrary, Mr. Malik Muhammad Qayyum, counsel for the respondents has made reference to the contents of the application filed by the respondents under Sections 5 and 14 of the Act before the learned District Judge as also the affidavits of the counsel of the respondents before the Trial and Appellate Court. Ch. Ahmed Farooq, Advocate, who was the counsel for the plaintiff before the Trial Court deposed that through a *bona fide* mistake he inadvertently mentioned in the plaint the jurisdictional value of the suit as Rs.90,000/-. Muhammad Yaqoob Ch. Advocate, counsel for the respondents before the Appellate Court *(in the first round of afore-mentioned litigation)* deposed that in ground No.10 of the memorandum of appeal he had specified the correct valuation as per the law, and that the filing of the appeal before the learned District Judge at the relevant time was on account of the *bona fide* belief with respect to the correct jurisdictional value according to him. It is thus argued by the learned counsel for the respondents that the aforesaid error of approaching the wrong forum was a result of *bona fide* mistake of the learned counsels for the respondents *(at the Trial and Appellate stage)* and the respondents were misled on account of such mistaken advice.

46. We have heard the learned counsel for the parties and have considered the submissions made by them. It may be reiterated that the

judgment of the learned High Court returning the memorandum of appeal had been challenged by the respondents before this Court in Civil Appeal No.734/1994 which was dismissed by this Court on 21.4.1998. There was a lengthy discussion about the merits of the case, considerable law was cited and finally the Court came to the following conclusion:-

> *"From the entire record it is quite apparent that till filing of appeal on 25.3.1985, there was hardly any doubt about jurisdictional value of the suit fixed by the appellants. From all these facts and circumstances it can be gathered that normally at the relevant time appeal filed by the appellants before Additional District Judge was not competent"*.

In our considered view the above decision settles the issue in that the stance of the respondents in approaching the District Court as having the pecuniary jurisdiction was rejected; the notion that the counsel for the respondents had inadvertently fixed a wrong valuation in the plaint and therefore their counsel in appeal could of his own volition change the valuation to "the correct valuation" was also rejected. Even otherwise, as far as the question of filing of appeal by the respondents' counsel before the wrong forum and a case for sufficient cause in that context being made out, it may be pertinent to mention here that there was no reason for the counsel of the respondent, whilst filing the appeal, to be misled by any fact or the law because the jurisdictional value was clearly mentioned in the plaint as Rs.90,000/- by the respondents. Such value was also clearly reflected in the decree passed by the learned Trial Court, whereby the suit of the respondents was dismissed. Thus the appeal should have been filed before the learned High Court as, at the relevant

point of time, it was such Court which had the pecuniary jurisdiction to hear the appeal on account of the jurisdictional value fixed in the plaint and decree sheet. At best, it is the case of the respondents that incorrect valuation had been made in the plaint due to inadvertence; but it transpires from the record that an objection was raised by the appellants/defendants about the incorrect valuation and that was the most opportune moment for the respondents having been put to notice about the so-called inadvertent incorrect valuation to ratify the said mistake but instead the respondents joined the issue. No attempt was ever made by the respondents during the course of trial to correct the valuation by seeking an amendment in the plaint. The trial court gave a finding on issue No.1 and retained the value of the suit filed by the respondents, which valuation squarely and duly appeared in the decree sheet; it was thus on the basis of the valuation of the suit fixed by the respondents in the plaint themselves and reflected in the decree which had to determine the forum of appeal. Thus at the time of passing the decree there was no ambiguity which could mislead the respondents' counsel into filing the appeal before the District Court. Whilst answering Proposition No.2 we have already held that inadvertence, negligence, mistake simpliciter etc. of the counsel does not constitute a sufficient cause. And the respondents have not been able to make out a case beyond mere inadvertence. As regards the plea of exercise of discretion raised by the respondents' counsel, we are of the considered view that in the instant matter the condonation of delay has been granted to the respondents by both the courts below for on the basis of arbitrary and whimsical reasons, that the exercise of discretion being against settled principles can always be interfered with. In view of the above this appeal is allowed; by setting aside the orders/judgments impugned the appeal of

the respondents before the District Court is dismissed as being barred by time.

Civil Appeal No.2658/2006

47. Respondents No.1 to 9 are the plaintiffs of the suit for declaration and possession filed *inter alia* against the appellant. The value of the suit for the purposes of court fee and jurisdiction was categorically mentioned in the plaint at Rs.8,000,000/- *(eighty lacs)*. The suit after being contested was decreed by the trial court on 22.2.1994. The appellant applied for certified copies of the judgment and decree on 8.3.1994, which *(copies)* were prepared and delivered on 26.4.1994. The appellant filed a regular first appeal *(RFA)* on 8.5.1994 before the District Court in which an order was passed on 23.6.1994 that the value of the suit for the purpose of jurisdiction was Rs.8,000,000/- and the memorandum of appeal was accordingly ordered to be returned to the appellant for presentation before the learned High Court. The appellant received the memorandum of appeal on 2.1.1996 from the District Court and filed the RFA before the learned High Court on 8.1.1996 along with an application under Section 5 of the Act for condonation of delay of the time consumed before the wrong forum. The learned High Court *vide* impugned judgment dated 27.8.2002 dismissed the appeal of the appellant on the ground of limitation holding that no sufficient cause for delay had been made out.

48. Learned counsel for the appellant has argued that it was through the inadvertent mistake of the counsel that the appeal had been filed before the wrong forum, suffice it to say that as declared earlier, such mistaken advice, even if unintentional, *simpliciter* does not constitute a sufficient cause in terms of Section 5 of the Act, instead

there have to be cogent reasons, clearly spelt out and proved on the record, for that purpose. We have perused the application for condonation of delay and as rightly observed by the learned High Court in the impugned judgment, the said application contains a mere narration of the facts leading up to the filing of the appeal before the learned District Judge, and there are no plausible reasons or justifications given for the filing of such appeal before the wrong forum, apart from a feeble assertion that *"the delay for filing the Regular First Appeal was not intentional on the part of the petitioner"*. As regards the averment in the said application that the time period from the date of filing of the appeal before the wrong forum till the return of the memorandum of appeal for filing before the correct forum should be condoned *"because the petitioners' appeal remained pending before Additional District Judge"*, we may observe *(as held in the earlier part of this opinion)* that mere pendency of an appeal before the wrong forum especially when no sufficient cause has been made out shall not be a ground *per se* or simpliciter for condonation of delay. Besides as mentioned above the memorandum of appeal was ordered to be returned on 23.6.1994 and the appellant never approached the Court for receiving the same within reasonable time rather, after considerable lapse of time of about 18 months, it was received on 2.1.1996. There is/was no explanation for such delay, i.e. 18 months and 10 days. It is not the case of the appellant that after the order of return of the memorandum of appeal it approached the Court promptly and it was the Court which took delayed in returning the memorandum of appeal. In light of the above, interference with the impugned judgment of the learned High Court is not warranted, thus the appeal merits dismissal.

Civil Appeal No.1670/2008

49. The respondent is the plaintiff who pre-empted the sale of the suit house in favour of the appellants by clearly valuing his suit for the purposes of court fee and jurisdiction at Rs.1,200,000/- *(twelve lacs)*. The suit after being contested was decreed on 2.10.2004 in the plaintiff's favour. The appellants applied for certified copies of judgment on 7.10.2004, which were delivered on 10.12.2004, after which they filed an appeal before the learned District Judge on 5.1.2005, which was admitted to regular hearing on 26.9.2005 and returned on 26.9.2005 for lack of pecuniary jurisdiction. Subsequently, the appellants filed an appeal before the learned High Court on 18.10.2005 which was dismissed by the Court through the impugned judgment dated 2.6.2008 with the observation that the value of the suit property for the purpose of jurisdiction was specifically mentioned in the plaint as Rs.1,200,000/-, hence, there was no confusion about the appellate forum and negligence of counsel was no ground for condonation of delay *(note:- even on merits, it was found that the appellant had failed to establish his case)*. Aggrieved, the appellants approached this Court, hence the instant appeal with the leave of the Court.

50. Heard. As is clear from the impugned judgment of the learned High Court no reasons were assigned by the appellants in their application seeking condonation of delay which could constitute a sufficient cause within the meaning of Section 5 of the Limitation Act, 1908 as enunciated in the earlier part of this judgment.

A perusal of the plaint *(paragraph No.6)* indicates that the value of the suit for the purposes of pecuniary jurisdiction was clearly stated as Rs.1,200,000/-. The judgment of the learned Trial Court reflects the amount of Rs.1,200,000/- as the sale consideration paid by the

appellants which is resultantly the market value of the suit house, and the decree sheet prepared by the learned Trial Court also mentions the value of Rs.1,200,000/-. Furthermore, the memorandum of appeal filed before the learned District Judge also categorically states the appeal to be valued at Rs.1,200,000/- for the purposes of pecuniary jurisdiction. There was no ambiguity regarding the law because at the relevant point in time, the pecuniary jurisdiction of the District Judge was capped at Rs1,000,000/- by virtue of the Civil Courts Ordinance, 1962 *(as it is a KPK matter)*. In light of the foregoing aspects of the matter, there can be no justifiable reason for filing the appeal before the District Judge. With respect to the justification given by the learned counsel for the appellants before the learned High Court that such mistake was inadvertent; suffice it to say that sheer inadvertence, negligence and/or mistake *(albeit bona fide)* is not recognised as a sufficient cause for condonation of delay, and neither does it reflect exercise of due diligence on behalf of the appellants or their counsel. As regards the plea that it was the duty of the learned District Court to have examined the pecuniary jurisdiction and the Court was at fault for not returning the memorandum of appeal on time, we find the idea risible; we have already held in the earlier part of this opinion that the same is not a valid reason for the condonation of delay of time spent before a wrong forum. In light of the above, we are of the forthright view that the learned High Court was correct in refusing to condone the delay; therefore, this appeal is hereby dismissed.

Civil Appeals No.60-L/2013 and 280-L/2013

51. These two appeals have been filed against a common judgment of the Lahore High Court hence will be dealt with together. The appellants of Civil Appeal No.60-L/2013 are the plaintiff/pre-emptors

(respondents in Civil Appeal No.280-L/2013) while the appellants of Civil Appeal No.280-L/2013 are the defendants/vendees *(respondents in Civil Appeal No.60-L/2013)*. For the sake of convenience, Civil Appeal No.280-L will be used as our reference point.

The respondents filed a suit for possession through pre-emption regarding the suit land against the appellants *(vendees)* and the mortgagees, whereas the subsequent purchasers, appellants No.20 to 30, were impleaded afterwards. The respondents' claim was that the consideration amount of the sale was Rs.100,000/- but in order to frustrate and prejudice their right of pre-emption, an exaggerated price of Rs. 353,000/- was entered in the record, out of which Rs.118,000/- was shown to be payable to mortgagees of the suit land. The value of the suit for the purposes of court fee and jurisdiction was fixed as **Rs.6,559.20/-** *(six thousand five hundred and fifty nine rupees and twenty paisas)*. After the trial of the case the suit was decreed in favour of the appellants *(plaintiffs)* on 23.2.1976 subject to payment of Rs.353,000/- less the amount already deposited by them as *Zar-e-Panjam* on or before 24.04.1976, failing which the suit would stand dismissed with costs. The learned trial court also held that out of this consideration Rs.118,000/- would be received by the mortgagees. Aggrieved, the respondents filed an appeal on **15.6.1976** before the learned High Court challenging the decree to the extent of **decretal amount only**. The appeal was admitted for regular hearing on 1.7.1976 but the learned Division Bench on 28.1.1990 remitted the appeal to the District Court due to lack of pecuniary jurisdiction. Such decision however was reviewed by the learned High Court on an application *(CM No.1-C of 1990)* filed by the appellants and instead of remitting the appeal, *vide* order dated 6.2.1990 it was directed that the memorandum of appeal be returned to the respondents for

presenting the same before the competent court by 13.2.1990. The respondents received the memorandum of appeal on 13.02.1990 and filed the same before the learned District Judge that very day. The appeal was heard by the learned District Judge on 20.9.1995 when the respondents counsel made a statement to the effect that as the value of the property has increased thus the respondents were ready to deposit the decretal amount of Rs.353,000/- and would withdraw the appeal; however in the same breath it was requested that time for the deposit of the balance pre-emption amount, as directed by the trial court *(note:- the time given by the trial court in this behalf was till 24.4.1976, failing which the suit would stand dismissed)* may be extended. The learned District Judge *vide* judgment dated 20.9.1995 dismissed the appeal as having been withdrawn. The request for extension of time for payment of the decretal amount was declined. The court also declined the verbal request for condonation of delay in filing the appeal. Aggrieved of the above judgment of the learned District Judge, the respondents filed a regular second appeal before the learned High Court on 20.12.1995 which was allowed on 17.12.2012 through the impugned judgment. Delay has been condoned on the ground that at the time of filing the appeal before the High Court *(admittedly the wrong forum)* the respondents were minors; their guardian acted on the wrong advice of learned counsel; the High Court *(in the earlier round of litigation)* while returning the appeal allowed the respondents time up to 13.2.1990, which was filed by them before the District Judge the same day. All these factors according to the High Court constitute a sufficient cause for condonation of delay.

It may be relevant to mention that as regards the merits, the learned High Court restored the judgment and decree of the learned Trial Court with the modification that the appellants may/will deposit the

market price of the suit land as fixed by the District Price Committee prevailing on 13.11.2012 within two months from the date of announcement of the judgment. Both parties being aggrieved of the impugned judgment have filed separate appeals which are now before us for determination.

52. Heard. The respondents being minors at the relevant point of time had duly filed the suit through a next friend; the same is the position of their appeal(s) before the High Court and learned District Judge; they were duly represented on both the occasions by a person *(next friend)* who was pursuing their best interests thus any alleged mistake of the next friend cannot be considered to be a sufficient cause for the condonation of delay. It is an admitted position on the record that the respondents themselves valued their suit for the purposes of court fee and jurisdiction at **Rs.6,559.20**. This value was not varied by the trial court. No reasons are established on the record which misled the counsel to give wrong advice in filing the appeal before the learned High Court; in fact no application in this context to establish sufficient cause for the condonation of delay was moved. Above all the decree in this case was passed by the trial court on 23.2.1976, the respondents applied for the copy on 8.3.1976, the copy was delivered on 5.4.1976, the appeal before the High Court was filed on 15.6.1976 and admittedly by that time the appeal before the District Court was barred by time. It seems obvious, or at any rate more than likely, that to cross the bar of limitation an abortive attempt was made to file the appeal before the High Court which lacked pecuniary jurisdiction. Simply because the appeal was filed before the District Judge the same day that the memorandum of appeal was returned does not by itself satisfy the test of Section 5 *ibid*; besides the direction of the learned High Court to file the appeal before the District

Court by 13.2.1990 cannot be construed in any manner to mean that the delay has been impliedly condoned.

In the light of the above, we allow this appeal, set aside the impugned judgment of the High Court condoning the delay in filing of the appeal by the respondents before the District Court, with the consequence that the order of the Additional District Judge dated 28.9.1995 is restored, in that the appeal of the respondents filed before the District Court stands dismissed as being barred by time. As Civil Appeal No.280-L/2013 has been allowed, Civil Appeal No.60-L/2013 being against the decision of the High Court for enhancement of the sale price of the suit land in the circumstances is rendered infructuous and is disposed of accordingly.

Civil Appeal No.60/2014

53. The appellant/plaintiff is a pre-emptor of the suit land whose suit against the respondents after being contested was dismissed by the trial court on 14.12.2010. The value of the suit for purposes of court fee and jurisdiction fixed in the plaint is Rs.1,700,000/- *(seventeen lacs).* The appellant applied for certified copies of the judgment on 22.12.2010 which *(copies)* were delivered to him on 24.12.2010 and the appeal was filed on 4.1.2011 before the District Court which was admitted to regular hearing on 10.1.2011. However, the appeal was returned on 1.7.2011 for want of pecuniary jurisdiction. Thereafter the appellant filed the appeal before the learned High Court on 6.7.2011 along with an application for condonation of delay under Sections 5 and 14 of the Act. The learned High Court *vide* the impugned judgment dated 23.10.2013 refused to condone the delay and dismissed the application for condonation of delay and the appeal as being barred by time on the ground that the suit was

clearly valued at Rs.1,700,000/- for the purpose of jurisdiction and that negligence of counsel does not constitute a sufficient cause and neither does an act of the Court *(as it is a KPK matter)*. Aggrieved the appellant preferred the instant appeal with the leave of this Court.

54. Heard. The application for condonation of delay filed by the appellant *(note:- which seemingly is unsupported by an affidavit)*, does not propound any plausible reason for filing the appeal before the learned District Judge. The application is essentially a bald factual narration leading to the filing of appeal before the wrong forum, save for the plea that it was the fault of the District Court that the appellant's appeal was entertained despite lack of pecuniary jurisdiction which has resulted in the appellant's suffering. In light of the view expressed in the earlier portion of this opinion regarding the principle of *actus curiae neminem gravabit*; the same is not attracted to the instant case and the plea raised by the appellant in his application for condonation of delay on that account in no way constitutes a sufficient cause to exclude the time spent before the wrong forum. There is no justification whatsoever provided in the said application indicating as to why the appellant or his counsel were led into believing that the appeal was to be filed before the District Court, when the plaint itself describes the value of the suit as Rs.1,700,000/-. The view of the learned High Court is unexceptionable, calling for no interference, therefore, the appeal is hereby dismissed.

Civil Appeal No.965/2014

55. This case entails the following facts:- the respondent Hussain filed a suit for recovery of Rs.5,000,000/- as damages against the appellant. The appellant contested the suit, issues were framed and evidence was recorded, after which the learned Trial Court decreed the

suit to the extent of Rs.800,000/- *vide* judgment and decree dated 18.11.2011. The appellant preferred an appeal before the District Judge on 23.12.2011 which was admitted to regular hearing. Upon an application filed by the respondent for dismissal of the appeal for want of pecuniary jurisdiction, the learned District Court returned the memorandum of appeal to the appellant through order dated 30.10.2013 for presentation before the correct forum as the suit was valued at Rs.5,000,000/-. The appellant applied for certified copies of the documents on 2.11.2013 which were prepared on 11.11.2013 and were delivered on 27.11.2013. On receipt of the certified copies, the appellant moved an application for receipt of original file on 29.11.2013 which *(application)* was disposed of through order dated 2.12.2013 for the return of documents after the receipt of certified copies. The appellant again applied for the certified copies of the file which were delivered to him on 30.12.2013 and on the same day, he received the original file. The appellant presented the appeal before the learned High Court on 9.1.2014 along with an application under Section 5 of the Act for condonation of delay. The appeal was dismissed by the learned High Court through the impugned judgment dated 7.4.2014 on the ground that even after return, the appeal was filed beyond the period of limitation and no explanation was given in the affidavit. Aggrieved, the appellant filed the instant appeal with the leave of this Court.

56. Heard. We find that the explanation set out in the appellant's application for condonation of delay *(paragraph No.4 thereof)* that the mistake in filing the appeal before the learned District Court was neither intentional nor deliberate is not persuasive. It is worthy to note that the value of Rs.5,000,000/- is clearly reproduced in the title itself, paragraph No.14 and the prayer of the plaint. Paragraph No.18 particularly provides

"That the value of the suit for the purpose of Court fee and jurisdiction is fixed for Rs.50,00,000/-..." The figure of Rs.5,000,000/- also finds mention in the decree sheet of the learned Trial Court. The above leaves no room for doubt or confusion that the value of the suit for the purposes of pecuniary jurisdiction was indeed Rs.5,000,000/- and accordingly the appeal should have been filed before the learned High Court. The 'reason' that the mistake was unintentional simpliciter is not a sufficient cause within the purview of Section 5 of the Act as has been held in the earlier portion of this opinion. No case for interference has been made out; the appeal is hereby dismissed.

Civil Appeal No.218/2015

57. The appellant/plaintiff filed a pre-emption suit against the respondent/defendant in respect of the suit property which was purchased by the respondent through registered sale deed dated 7.5.2008 against a price of Rs.2,500,000/- but as per the contention of the appellant, the actual consideration fixed and paid was Rs.500,000/- and the suit was accordingly valued for the purpose of jurisdiction at Rs.500,000/-. The respondent contested such valuation and issue No.5 was framed on the basis thereof. The learned Trial Court decreed the suit *vide* judgment and decree dated 29.6.2011 by fixing the sale price as Rs.2,500,000/-. Aggrieved, the respondent preferred an appeal *(RFA No.53/2011)* before the learned High Court on 19.7.2011 while the appellant filed an appeal *(RCA No.138/XIII/2011)* before the learned District Court on 25.7.2011. The learned District Court *vide* order dated 26.7.2011 returned the appeal of the appellant for presentation before the correct forum on the ground that the value of the property for the purpose of Court fee and jurisdiction was Rs.2,500,000/-. The appellant accepted

this position and filed an appeal *(RFA No.63/2011)* before the learned High Court on 17.8.2011. Both of the appeals *(of the appellant and respondent)* were returned by the learned High Court *vide* judgment dated 8.10.2013 to the parties for presentation before the proper forum on the ground that the valuation of the suit for the purpose of Court fee and jurisdiction was given as Rs.500,000/- in the plaint, hence, as per Section 18 of the Ordinance the appeal(s) was maintainable before the District Court, in spite of the fact that the learned Trial Court fixed the market value of the property as Rs.2,500,000/-, because the forum of appeal was to be determined on the basis of the valuation given in the original plaint. The respondent presented the appeal along with an application for condonation of delay under Section 5 of the Act before the learned District Court on 22.10.2013 which *(appeal)* was dismissed on 3.7.2014 as being time-barred. It is pertinent to note that the appellant pursuant to the order dated 8.10.2013 neither received memorandum of appeal nor filed the same before the learned District Court, therefore, to his extent, matter ended. Aggrieved of the judgment dated 22.10.2013, the respondent filed a civil revision before the learned High Court which *(revision)* was allowed *vide* the impugned judgment dated 3.10.2014 with the observation that the respondent was a victim of the act of the Court which was sufficient cause for condonation of delay. The appellant challenged the above order before this Court, hence the instant appeal with the leave of this Court.

58. Learned counsel for the appellant argued that there was no confusion regarding the value of the suit for the purpose of filing the appeal as such value was clearly stated in the plaint; there was no finding by the learned Trial Court amending the value of the suit which could be said to have taken precedence over the value set out in the

plaint. On the other hand, learned counsel for the respondent submitted that the reason for the respondent filing the appeal before the learned High Court as opposed to the learned District Court was that the learned Trial Court in respect of issue No.5 regarding the market value of the suit property had held it to be Rs.2,500,000/- and it was this factor that misled the respondent into believing that the appeal should have been filed before the learned High Court.

59. We have heard the learned counsel for the parties. Upon a perusal of the plaint, it is manifest from the title and paragraph No.1 thereof that the appellant had valued the suit property at Rs.500,000/-. Paragraph No.6 specifically mentions Rs.500,000/- as the value of the suit for the purposes of pecuniary jurisdiction. Such valuation was categorically denied by the respondent through her written statement *(paragraphs No.1 and 6 thereof)* asserting it to be Rs.2,500,000/-. It is in light of this divergent pleas that the learned Trial Court framed issue No.5 in that *"What is the market value of the suit property?"* and held as follows:-

> *"The burdon (sic burden) of proof this issue is on the plaintiff. The plaintiff in the plaint assert that the value of the suit property is no more than Rs. 5,00000/-, but in order to deprive the plaintiff rights of the plaintiff an incorrect amount of Rs. 25,00000/- were mentioned as sale consideration in Vasiqa # 1431, dated 07.05.2008. The plaintiff has failed to produce in the Court any witness in this regard. Moreover, none of the official witness is called for in this respect to produce the average price table regarding this issue, meaning thereby the plaintiff himself admitted the fact that the value of the suit property is Rs. 25,00,000/-. So, Rs. 25,00,000/- is fixed as market value of the suit property. So, the issue is decided in negative."*

Keeping in view the above finding of the trial court, which determination was duly reflected in the decree sheet as well, the respondent was justified in considering that the value of the suit for the purposes of jurisdiction had been changed/modified by the trial court, thus leading him to prefer an appeal before the High Court whereas the appellant [whose appeal had already been returned by the District Court and who in compliance with the said order himself filed an appeal before the High Court] raised an objection that the High Court lacked the pecuniary jurisdiction and sought the return of respondent's appeal and succeeded in this behalf. But the learned High Court while passing the order of return remained oblivious that in a suit for pre-emption of a house *(urban property)* the value of the suit for the purposes of jurisdiction is the sale consideration of the suit property; thus as per the finding of the trial court on issue No.5, when it was held that the sale consideration was Rs.2,500,000/- this modified the jurisdictional value automatically. We have considered the decree sheet prepared by the trial court which is absolutely in consonance with the finding of the trial court on the said issue. The market value of the suit property at Rs.2,500,000/- has been clearly indicated therein, thus for all intents and purposes the above became the changed value for the purposes of jurisdiction of the forum of appeal. In fact the respondent had rightly filed the appeal before the High Court in the first instance and the earlier order of the High Court dated 8.10.2013 returning the appeal was/is bad in law. In this manner the respondent has been compelled to file his appeal before the District Court which had no jurisdiction on account of the increase in the sale price of the property by the trial court. Therefore for the purposes of doing complete justice we set aside the judgment of the High Court dated 8.10.2013 and hold that the original RFA No.53/2011 of the respondent

be deemed to be pending before the High Court and be decided on merits. We must express our dismay that the respondent for no mistake on his part has been made to run from pillar to post for pursuing his statutory right of appeal. In light of the above, this appeal is dismissed.

60. To recapitulate, Civil Appeals No.2564/2011, 2658/2006, 1670/2008, 60/2014, 965/2014 and 218/2015 are dismissed, Civil Appeal No.280-L/2013 is allowed and Civil Appeal No.60-L/2013 is disposed of as having been rendered infructuous.

CHIEF JUSTICE

JUDGE JUDGE

JUDGE JUDGE

Announced in open Court
on _____ at _____

Not Approved For Reporting
Waqas Naseer/*

EJAZ AFZAL KHAN, J.- I have gone through the scholarly written judgment of my learned brother Mr. Justice Mian Saqib Nisar and respectfully agree with the answers to questions Nos. 1, 2 and 4. I, however, don't agree with the answer to question No. 3. The question reads as under:-

> *"Question No. 3:- Where an appeal which has been entertained by the staff of the court or the court itself which has no pecuniary jurisdiction and is ultimately returned to the appellant or is dismissed, whether this protects the appellant from the bar of limitation and/or constitutes a sufficient cause for the condonation of delay on the principle of actus curiae neminem gravabit."*

2. The answer reads as under :-

> *"39. The noted maxim which connotes "an act of the court shall prejudice no man" is founded upon justice and good sense; and affords a safe and certain guide for the administration of law and justice. It is meant to promote and ensure that the ends of justice are met; it prescribes that no harm and injury to the rights and the interest of the litigants before the court shall be caused by the act or omission of the court. This rule of administration of justice is meant for the benefit of both sides of litigants before the Court and it would be illogical to conceive that the rule would or should be applied for the advantage of one litigant to the prejudice and disadvantage of the other. It is the duty of the Court to act as a neutral arbiter between the parties and to provide justice to them through strict adherence to law and keeping in mind the fact of each case. The rule is neither meant to provide a premium to the negligent litigant who finds himself on the wrong side of limitation for unfounded reasons and nor to impair the rights of the other side. The principles of proportionality and balancing have to be kept at the forefront by the court whilst applying this rule. The Court must see what fault, if any, has been committed by the court on account of which a litigant has been made to suffer; then the court must consider whether the benefit of the rule can or should be extended to a negligent litigant who has failed to make out a sufficient cause in terms of Section 5 of the Act as explained above. In our candid opinion the principle actus curiae neminem gravabit has no application where a litigant approaches a wrong forum and such appeal is entertained by the staff of the court or by the court or even admitted to regular hearing. Thus no condonation of delay can be availed by the appellant on the basis of this principle."*

3. Before I deal with the answer it is worthwhile to know what does the maxim *actus curiae neminem gravabit* stand for, what is its origin, how has it been applied in the past and even today and what is the rationale behind it? This maxim so to speak, has been founded upon the principles of justice and good conscience. This maxim appears to be as old as the Court itself. The rationale behind this maxim is to undo the wrong or prejudice caused to a party

by the act of the Court. Its application assumed different forms and manifestations at different stages of the history. Even today this maxim is applied to undo an injury or injustice caused to a party by an act of the Court or by the laches or mistakes of its officers. It is also applied to restore what has been delayed or denied to a party by the act of the Court or negligence of the persons manning and managing it. In early eighties of 19th Century, Mr. Justice Harlan in the case of **Robert Mitchell. v. A. M. Overman (103 U.S. 64-65)** while delivering the opinion of the Supreme Court of the United States commented on the maxim in the words reading as under :-

> *"The adjudged cases are very numerous in which have been considered the circumstances under which Courts may properly enter a judgment or decree as of a date anterior to that on which it is, in fact, rendered. We deem it unnecessary to present an analysis of the authorities, some of which are cited in a note to this opinion, but content ourselves with saying that the rule established by the general concurrence of the American and English courts, is, that where the delay in rendering judgment or decree arises from the act of the court, that is, where the delay has been for its convenience, or has been caused by the multiplicity or press of business or the intricacy of the questions involved, or for any other cause not attributable to the laches of the parties, but within the control of the court, the judgment or decree may be entered retrospectively, as of a time when it should or might have been entered up. In such cases, upon the maxim, actus curiae neminem gravabit, which has been well said to be founded upon justice and good sense and to afford a safe and certain guide for the administration of justice, it is the duty of the court to see that the parties did not suffer by the delay. Whether a nunc pro tunc order should be made, depends upon the circumstances of the particular case. It should be granted or refused, as the justice of the cause may require. These principles control the present cause, Stutzman was alive when the cause was argued and submitted for decree. He was entitled at that time, or at the Term of submission, to claim its final disposition. A decree was not then entered because the case, after argument, was taken under advisement. The delay was altogether the act of the court, and its duty was to order a decree nunc pro tunc, so as to avoid entering an erroneous decree."*

4. Act of the Court if considered in isolation may appear to have no nexus with the cause justifying extension of time for not preferring an appeal well within the time prescribed therefore or exclusion of time spent in prosecuting the suit in a wrong forum. But when it is considered with reference to the other facts and circumstances attending such cases, it is not only inextricably intertwined but has deep nexus with the cause justifying extension or exclusion of time as the

case may be. Wrong or mistaken advice of a counsel has been recognized as a sufficient cause for extension or exclusion of time eversince the enactment of the Limitation Act, 1877 and the Limitation Act, 1908 in India as is evident from the judgments rendered in the cases of **Brij Indar Singh. Vs. Lala Kanshi Ram and others (AIR 1917 P.C. (From Lahore), Sunderbai and another. Vs. Collector of Belgaum and others (AIR 1918 P.C.) (From Bombay), Kanwar Rajendra Bahadur Singh. Vs. Rai Rajeshwar Bali and others (AIR 1937 P.C. 276), Mata Din. Vs. A. Narayanan (AIR 1970 SC 1953), State of Kerala. Vs. Krishna Kurup Madhava Kurup (AIR 1971 Ker 211), Badlu and another. Vs. Shiv Charan and others [(1980) 4 SCC 401] and Ghasi Ram and others. Vs. Chait Ram Saini and others [(1998) 6 SCC 200]**. But what is wrong advice of a counsel in essence and substance? It, as far as I am capable to understand, is nothing but a wrong signal at a junction of a road to a desired destination, which misleads a wayfarer. What is entertainment of an appeal or a suit by a wrong forum in effect and consequence? It is also nothing but another wrong signal at another junction of such road. If a wrong advice like a wrong signal at one junction of the road could mislead a wayfarer, entertainment of an appeal or a suit by a wrong forum like another wrong signal at another junction of the road to the destination, could also mislead him. What to do in a situation thus emerging? Sections 5 and 14 of the Limitation Act answer the question by providing for extension of time for not preferring the appeal well within time prescribed therefor and exclusion of time spent in prosecuting the suit in a wrong forum. Whether it is the appeal or the suit the cause for preferring or prosecuting it in the wrong forum is mistaken view of its jurisdiction, which in the first instance finds expression in the advice of the counsel and then in the act of the Court entertaining such appeal or suit. If allowance could be given for mistaken view of the counsel I don't understand why could it not be given for mistaken view of the Court entertaining the appeal or the suit. It would thus be unjust, unfair and unreasonable to treat the two differently simply because one finds expression in the act of the counsel and the other finds expression in the act

of the Court. The latter deserves all the more allowance firstly because the Court entertaining the appeal or the suit did not care to know that it lay outside its jurisdiction; secondly because it sat over it for months and months together instead of returning it for being presented in the Court of competent jurisdiction and thirdly because the appellant or the plaintiff went out of limitation on account of the aforesaid act of the Court.

5. It is true that Sections 5 and 14 of the Act being distinct in their scope and application deal with distinct states and situations, but it is equally true that the distinction between the two disappears when both of them intend to undo any injury or injustice caused to the appellant or the plaintiff by the act of the counsel or by that of the Court and protect the lis having merit from being thrown out at the threshold without being considered. It was in view of this equation between the two that the principle justifying exclusion of the time spent in prosecuting the suit in a wrong forum was also applied to appeal if prosecuted in good faith and with due diligence. Judgments rendered in the cases of **Consolidated Engineering Enterprises. Vs. Principle Secretary, Irrigation Department and others [(2008) 7 SCC 167] and J. Kumaradasan Nair & Anr. Vs. IRIC Sohan & Ors. (AIR 2009 SC 1333)** are lucid and luminous examples in this behalf. It is correct that such act of the Court or its officials as highlighted in the main judgment authored by my learned brother Mr. Justice Mian Saqib Nisar, invariably prejudices one and places the other party in advantage, but it has to be undone in line with the letter and spirit of sections 5 and 14 of the Act to ensure equilibrium in the administration of justice and avert injustice and its perpetuation. If impair of a right accruing to the other party could be a reason for denying premium to the appellant or the plaintiff on account of the act of the Court, it could also be a reason for denying premium to the appellant or the plaintiff on account of the act of the counsel. It would thus be against the principles of parity, propriety and proportionality to give premium to the act of

the counsel and deny it to the act of the Court. For being evenhanded is better than being lopsided while sitting in judgment on the matters of this nature.

6. In the case of **Rodger. v. The Comptoir d' Escompte de Paris (1871) 3 P.C. 465)** the principle enshrined in the maxim *actus curiae neminem gravabit* was also recognized as having much wider implications in the words reproduced below :-

> *"One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors and when the expression 'the act of the Court is used, it does not mean merely the act of the primary Court, or of any intermediate Court of Appeal, but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case."*

7. In the case of **Jai Berham and others. Vs. Kedar Nath Marwari and others (AIR 1922 P.C. 269)** the same principle was upheld by the Privy Council by holding as under :-

> *"It is the duty of the Court under S. 144 of the Civil Procedure Code to "place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed".*
>
> *Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved."*

8. In **East Suffolk Rivers Catchment Board. Vs. Kent and another (1941 AC 74)** Lord Atkin, after referring to some decisions of House of Lords, observed as under :-

> *"I treat it therefore as established that a public authority whether doing an act which it is its duty to do, or doing an act which it is merely empowered to do, must in doing the act do it without negligence, or as it is put in some of the cases must not do it carelessly or improperly. Now quite apart from a duty owed to a particular individual which is the question in this case I suggest that it would be difficult to lay down that a duty upon a public authority to act without negligence or not carelessly or improperly does not include a duty to act with reasonable diligence by which I mean reasonable dispatch."*

9. Lord Eldon in **Pulteney. Vs. Warren (1801) 6 Ves. 73, 92** observed as under :-

> *"If there be a principle, upon which Courts of justice ought to act without scruple, it is this; to relieve parties against that injustice occasioned by its own acts or oversights at the instance of the*

> *party, against whom the relief is sought. That proposition is broadly laid down in some of the cases".*
> *This view was approved of by the House of Lords in The East India Company v. Campion (1837) 11 Bli. (N.S.) 158."*

10. In the case of **Parker. Vs. Ellis (362 U.S. 574)** the Supreme Court of the United States reaffirmed the dictum rendered in the case of **Robert Mitchell. v. A. M. Overman (supra)** by holding as under :-

> *"It is the fault of the Courts, not Parker's fault, that final adjudication in this case was delayed until after he had served his sentence. Justice demands that he be given the relief he deserves. Since the custody requirement, if any, was satisfied when we took jurisdiction of the case, I would grant the relief as of that date".*

11. In the case of **Sough Eastern Coalfields Ltd., Vs. State of M. P. and others (AIR 2003 SC 4482)** while dilating upon the act of the Court and suffering of the parties therefrom held as under :-

> *"26. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the 'act of the court' embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the Court; the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been, had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is the real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand*

> *to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced, we are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation."*

12. In the case of **Amarjeet Singh and others. Vs. Devi Ratan and others (AIR 2010 SC 3676)** the Supreme Court of India commented on the maxim *actus curiae neminem gravabit* in the words as under :-

> *"15. No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting interim order and thereafter blame the Court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim "Actus Curiae neminem gravabit", which means that the act of the Court shall prejudice no one, becomes applicable in such a case. In such a fact situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any underserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized, as institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court. (Vide Shive Shankar & Ors. v. Board of Directors, Uttar Pradesh State Road Transport Corporation & Anr., 1995 Suppl. (2) SCC 726; M/s. GTC Industries Ltd. v. Union of India & Ors., AIR 1998 SC 1566: (1998 AIR SCW 1089); and Jaipur Municipal Corporation. v. C. L. Mishra, (2005) 8 SCC 423)".*

13. In the case of **Hidayatullah. Vs. Murad A. Khan (PLD 1972 SC 69)** this Court on its own helped the appellants out of the wrong caused to them by the act of the Court by holding as under :-

> *"There was, as we have already pointed out, a very good and substantial reason for the extension of time, because, even assuming that no application was made by the appellants for such extension of time, the Court, in the interest of justice, was fully competent suo motu to extend the time when it had by its own act made it practically impossible for the appellants to comply with its original order by adjourning the application for furnishing security to the 6th of January, 1968."*

14. In **Hari Ram. Vs. Akbar Hussain (ILR 29 All. 749)** a full Bench of the Allahabad High Court held as under :-

> *"The mistake may in its origin be the mistake of the plaintiff; by the time the plaint has been registered, the mistake has become the mistake of the Court. If the Court or the Munsarim discovered the plaintiff's mistake before registration of the plaint, the plaint*

> *would at once be rejected under section 54 of the Code of Civil Procedure and never registered at all".*

15. In the case of **Rashad Ehsan and others. Vs. Bashir Ahmad and another (PLD 1989 SC 146)** this Court after considering a good number of judgments held as under :-

> *"I, therefore, agree with the view of the Division Bench that the notice issued by the Collector and published in the newspaper which explicitly mentioned that the balance of the price shall be payable on confirmation of the sale had contributed to the delay. This public notice was undoubtedly in violation of the provisions of Order XXI, Rule 85 of the Civil Procedure Code. But the error was committed by the officer authorized to conduct the sale and to penalize the auction-purchaser for complying with the directions, even though erroneous, of the functionary conducting the sale is neither fair nor equitable. Accordingly the maxim "Actus Curiae Neminem Gravabit" comes into play, with a view to obviate hardships and which may otherwise be the result of the errors of the Court itself. Thus, where a non-compliance with the mandatory provisions of a law occurs by complying with the direction of the Court, which is not in conformity with the law, the party complying therewith is not to be penalized. Indeed, the law becomes flexible to absorb such abnormalities and treat the infractions as harmless. Where the directions issued while administering the law have been followed but it is found that the authority itself had acted in deviation of the law in some particulars, the party acting in accordance with such directions is not held to be blameworthy."*

16. In the case of **Sherin and 4 others. Vs. Fazal Muhammad and 4 others (1995 SCMR 584)** this Court after examining a great deal of case law held as under :-

> *"It is to be noticed that all public authorities including the judicial functionaries while doing an act enjoined by law or merely empowered to do it must not do it improperly. An action may lie against a public authority for misfeasance or nonfeasance but for the sake of safe administration of justice and good sense no action lies for the breach of duty when the duty to perform is judicial or quasi-judicial. There may be a variety of reasons for omission or failure in performing such duty or exercising power with reasonable dispatch such as delaying tactics of the parties to the action multiplicity of pending cases in the Court or intricacies of questions of law and facts raised before it. As stated at page 75 in Broom's Legal Maxims: "Cases, however, have occurred, in which injury was caused by the act of legal tribunal, as by the laches or mistake of its officer; and where, notwithstanding the maxim as to actus curiae, the injured party was without redress." Presumably the need to mitigate the rigor of the hardship inflicted on a party in the course of administration of justice, by an act of the Court, led to the emergence of the norm that "the act of the Court shall prejudice no man".*

And thus condoned the delay by holding as under :-

> *"We feel that omission on the part of learned District Judge to take timely action is the major cause of refilling of the appeal by*

> *the appellants, in the High Court, out of time. They have been the victim of the act of the Court which furnishes "sufficient cause" under section 5 of the Limitation Act, for condonation of delay. The fact that after receiving the memorandum of appeal from the District Court, some time was consumed by the appellants, in presenting it to the High Court, in the circumstances of the case is inconsequential. We are, therefore, inclined to condone the delay in presenting the memorandum of appeal to the High Court".*

17. In the case of **Syed Haji Abdul Wahid and another. Vs. Syed Sirjuddin (1998 SCMR 2296),** this Court by approving the judgment rendered in the case of Sherin and 4 others. Vs. Fazal Mehmood and 4 others held as under :-

> *"From the preceding discussion, it emerges that the ratio decidendi in Abdul Ghani v. Ghulam Sarwar has been followed consistently. No doubt Abdul Ghani's case laid down that an advice given by the counsel against a clear provision of law would amount to gross negligence on the part of counsel and any action taken on such advice would not entitle the party to seek condonation of delay on the ground that he bonafidely acted on that advice, but the above rule laid down in Abdul Ghani's case did not exclude from its purview condonation of delay by the Court under section 5 of the Limitation Act in a case where the appellant is able to establish that he acted in good faith in the above quoted passage from Abdul Ghani's case. Therefore notwithstanding, the fact that section 14 of the Limitation Act, in terms does not apply to proceedings of an appeal, if the appellant is able to establish that he followed the remedy before a wrong forum in good faith, the Court may condone such delay in filing of the appeal treating it as "sufficient cause" in such cases would depend on the facts and circumstances of each case".*

18. In the case of **Karachi Electric Supply Corporation Ltd. Vs. Lawari and 4 others (PLD 2000 Supreme Court 94)** this Court after dealing with the expression sufficient cause, due diligence, good faith and act of the Court held as under :-

> *"In the aforesaid admitted facts and circumstances, we are of the view that it is not a case where the appeal had been filed by the appellant before the District Judge only on account of mistaken advice of the counsel. Here the act and conduct of the District Judge and its office in entertaining the appeals on both occasions i.e. in the earlier round when the appeal was filed by the respondents and then when the appeal was filed by the appellant and District Judge deciding the appeals on both occasions on merits and not noting or raising the question of maintainability, and respondents on both occasions, are also factors which led the appellant in filing the appeal before the District Judge and pursuing the same there. In our view taking all the above, facts and circumstances together, a case of sufficient cause as required in section 5 of the Limitation Act had been made out and the appeal filed by the appellant before the High Court was not liable to be rejected on the ground of limitation."*

19. In the case of **Mst. Bas Khana and others Vs. Muhammad Raees Khan and others (PLD 2005 Peshawar 214)** a Division Bench of the Peshawar High Court in an identical situation held as under:-

> "*Assuming for a while that the appellants did not act with due diligence by prosecuting their remedy in a wrong forum, could be put on the right track by the learned District Judge, the day the memorandum of appeal was presented before him. This is what preliminary hearing stands for. In any case when it was entertained and even admitted by the learned Judge without adverting to its competency on account of his pecuniary jurisdiction, all the time so consumed from its entertainment to its return in his Court, cannot be debited in the account of the appellants, and thus they cannot be allowed to suffer for the act of the Court. Had it been returned on the first date of hearing the appellants could have presented it in this Court well within time. Since the time was consumed due to the act of the Court, it will certainly constitute a sufficient cause for condonation of delay as according to the principle enshrined in the maxim actus curiae neminem gravabit, 'an act of the Court shall prejudice none'."*

The Bench while parting with the judgment observed as under:-

> *"While parting with this judgment we will direct the Registrar of this Court to circulate a copy of this judgment to all the Courts of the learned District and Additional District Judges and the Clerks of the Court with the remarks that they should before entertaining any appeal ensure that it is within their pecuniary jurisdiction.*"

20. It thus follows that the maxim *actus curiae neminem gravabit* is the most vital part of our jurisprudence. Excluding it from the purview of sections 5 and 14 of the Act would amount to excluding the most vital part of the jurisprudence which has grown over the centuries and earned recognition of the Courts ever since then. I, therefore, hold that the appellants going out of

limitation on account of the act of the Court are entitled to extension of time. Their appeals thus stand decided accordingly. However, it is directed that henceforth the Clerk of the Court while receiving appeal in the office and the learned District Judge hearing appeal in motion shall ensure that it is presented in a competent forum and in case it is otherwise he shall immediately return it for being presented in the Court of competent jurisdiction. Order of this Court be circulated to all the District Judges and the Clerks of Court for doing the needful.

Judge

ORDER OF THE BENCH

With the majority decision of four to one the result of the appeals is recorded in paragraph No.60 *(supra)* of the majority judgment.

CHIEF JUSTICE

JUDGE JUDGE

JUDGE JUDGE

Announced in open Court
on **16.8.2016** at **Islamabad**
Approved For Reporting
Waqas Naseer/*