

ORDER SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

JUDICIAL DEPARTMENT

C. M. A No.01 of 2021

M/S Utility Store Corporation of Pakistan

VERSUS

National Insurance Company through its CEO, etc.

Serial No. of order of proceedings	Date of order of proceedings	Order with signatures of judge, and that of parties of counsel, where necessary.
1	2	3

19.01.2022 Mr. Ijaz Janjua and Muhammad Sameer,
Advocate.

ARBAB MUHAMMAD TAHIR, J: This appeal is arising out of the order dated 07.04.2021 passed by the Insurance Tribunal / Addl: District & Sessions Judge-VII, Islamabad (West), whereby suit of the appellant/plaintiff was rejected under Section 3 of the Limitation Act, 1908 being barred under article 86(b) of the Limitation Act, 1908 under Order VII Rule 11 CPC.

2. Brief facts leading to the filing of the instant C.M.A are that in the year 2008, appellant/plaintiff entered into an extendable insurance agreement with respondent/defendant No.1 qua comprehensive insurance of any loss or damages, if happened or accrued to the appellant/plaintiff's Warehouses, situated in different places of the country. On 23.03.2009, a dacoity took place in the Warehouse of appellant/plaintiff situated in Old Atlace Tyre Company 32-KM, Lahore Road, Sheikhpura Region, investigation was conducted by the Internal Investigations Committee of the appellant and two Surveyors of the

respondents/ defendants No.2 & 3 jointly, and as per survey report, loss/damage of Rs.53,07,869/- got occurred to the appellant/plaintiff. As per joint investigation, appellant /plaintiff submitted claim qua the loss accrued through the dacoity with respondent as per terms of the insurance agreement but the respondents/defendants rejected the claim of the appellant/plaintiff on the ground that due to insufficient security measures, loss/damage was accrued. It is further asserted that appellant/plaintiff paid premium for the whole year to the respondents/defendants, against which the warehouse was declared as secured and insured in respect to any damage or loss accrued by any means whatsoever.

3. Arguments heard. Record perused.

4. It is an admitted fact that the impugned order was passed on 07.04.2021, the appellant/plaintiff applied for copy on 30.04.2021 and obtained the same on 21.05.2021 while the appeal was filed on 09.06.2021. The appeal in hand was filed with a delay of one month and 04 days.

5. If the period consumed for obtaining copies is excluded, even then the appeal is barred by four(04) days which has not been explained in the application for condonation of delay filed under Section 05 of the Limitation Act, 1908.

6. The Limitation Act, 1908 is not applicable in the matter in hand as being a special law under the Insurance Ordinance, 2000. Section 124(2) of the said Ordinance provides 30 days for filing of appeal. For

ready reference, the Section 124(2) is reproduced here under:-

"124. Appeal.- (1) - - - -

(2) Any party aggrieved by a decision of the Tribunal may, if the amount of the claim in dispute or the penalty prescribed, as the case may be, is not less than one hundred thousand rupees, prefer an appeal to the High Court within a period of thirty days from the date of such decision."

5. The appeal in hand as well as suit before the Trial Court are being filed under the Insurance Ordinance, 2000, therefore, delay cannot be condoned under Limitation Act, 1908 nor application under Limitation can be filed. In this regard reliance is placed upon **2020 CLD 249 (Lahore) titled State Life Insurance Corporation of Pakistan through Zonbal Head v. Mst. Nasreen Begum).**

6. Another important aspect of the matter is that Section 29 of the Limitation Act, 1908 specifically gives protection to the period of limitation prescribed by any special or local law.

7. In view of above discussion, the C.M. for condonation of delay is not maintainable, and the same is dismissed. Consequently, instant appeal also stands **dismissed in limine** being barred by limitation under Section 124(2) of Insurance Ordinance, 2000.

(MIANGUL HASSAN AURANGZEB)
JUDGE

(ARBAB MUHAMMAD TAHIR)
JUDGE