

Form No: HCJD/C-121  
**JUDGEMENT SHEET.**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**F.A.O. No.66 of 2014**

***Farooq Bashir.***

*Versus*

***Arif Bashir and others.***

**Appellant's by : Malik Ghulam Mustafa Kandwal.  
Advocate and Ms. Sidra Gulzar,  
Advocate.**

**Respondent's by : Mr. Rizwan Akhtar Awan, Advocate  
Mr. Intezar Hussain, Advocate and  
Muhammad Arbab Alam Abbasi,  
Advocate.  
Mr. Awais Haider Malik, State  
Counsel.  
M. Arif, ASI.**

**Date of hearing : 05.03.2020.**

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**AAMER FAROOQ, J. -** This appeal is directed against order dated 26.05.2014, passed by Civil Court Islamabad.

2. The facts, leading to filing of the instant appeal, are that appellant filed a suit for declaration, cancellation of documents, perpetual and mandatory injunction against the respondents. The claim of the appellant was with respect to property bearing Plot No.59-G, Industrial Area, Sector I-10/3, Islamabad. It was alleged that the property is owned by him, however, due to practical exigencies names of Mrs. Hajara Begum, (mother of the appellant) as well as respondents No.1&2 was incorporated in the records. It was alleged

that Mst. Hajara Begum and respondents No.1&2 are benamidars. Alongwith the suit an application under Order XXXIX Rules 1&2 C.P.C. was filed seeking restraining order against the said respondents. The referred application was dismissed by the learned Trial Court, vide order dated 26.05.2014. The appellant filed appeal against the said order before the District Court (West), Islamabad, which was returned due to lack of pecuniary jurisdiction on 13.09.2014. The present appeal was instituted on 15.09.2014, alongwith the appeal an application for condonation of delay has also been filed.

3. Learned counsel for the appellant, *inter-alia*, contended that erroneously the appeal was instituted before District Court (West), Islamabad which lached pecuniary jurisdiction; consequently, the same was instituted on 15.09.2014 in this Court. It was submitted that the property in fact is owned by the appellant; however, respondents No.1&2 are now denying the ownership of the appellant. It was contended that under the facts and circumstances, it is appropriate that the injunctive order be confirmed against the respondents till the time matter is finally adjudicated. Learned counsel highlighted that the necessary elements required for grant of interim relief i.e. prima facie case, balance of convenience and irreparable loss are prevalent.

4. Learned counsel for the respondents, *inter-alia*, contended that the appeal is barred by limitation and the delay cannot be condoned inasmuch as there is no plausible explanation for the same. It was contended that even otherwise, on merit, the appellant has no case inasmuch as the documents are in name of respondents N.1&2 as

well as their mother and the appellant was granted power of attorney to deal with the property. In support of his contentions, learned counsel placed reliance on "*Khushi Muhammad through L.Rs. and others Vs. Mst. Fazal Bibi and others*" (**PLD 2016 SC 872**), "*Dr. Syed Sibtain Raza Naqvi Vs. Hydrocarbon Development and others*" (**2012 SCMR 377**), "*Mujahid Shah and another Vs. Suhail Ikram and 03 others.*" (**PLD 2006 Lahore 26**) and "*Syed Saqlain Abbas Vs. Syed Hayat Shah*" (**2012 CLC 945**).

5. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. As noted above that the order impugned in the instant appeal was passed on 26.05.2014, the appeal was preferred before the District Judge (West), Islamabad, which was returned on 13.09.2014. In this behalf, the appellant applied for the certified copy of order dated 26.05.2014 on 17.06.2014 and received the same on 24.06.2014. The period of limitation prescribed for filing of appeal before this Court against the order passed by Civil Court is ninety days from the date of the order. Clearly the appeal instituted before this Court is barred by limitation as the same was filed on 15.09.2014, much later after the prescribed period of limitation. Appellant has sought condonation of delay on ground of the fact that the remedy was being pursued before wrong forum. In this behalf, an application for condonation of delay was also filed alongwith the appeal (C.M. No.01 of 2014).

7. In so far as, the condonation of delay is concerned, the case law relied upon by respondents is instructive. In case reported as "*Khushi Muhammad through L.Rs. and others Vs. Mst. Fazal Bibi and others*" (**PLD 2016 SC 872**), the Hon'ble Supreme Court of Pakistan held that an application of Section 14 of the Limitation Act, 1908 was restricted to suits only and had no direct and independent application to cases where an appeal had been filed before a wrong forum. Similar view was expressed in cases reported as "*Syed Saqlain Abbas Vs. Syed Hayat Shah*" (**2012 CLC 945**), "*Mujahid Shah and another Vs. Suhail Ikram and 03 others*" (**PLD 2006 Lahore 26**) and "*Dr. Syed Sibtain Raza Naqvi Vs. Hydrocarbon Development and others*" (**2012 SCMR 377**). The sole reason expressed in the application for condonation of delay is pursuance of the remedy before the wrong forum. The referred reason or ground is not sufficient for condonation of delay in light of the above-mentioned judgments.

8. In view of the above, no ground for condonation of delay is made out, hence an application for condonation of delay (C.M. No.01 of 2014) is accordingly **dismissed**. Since the appeal is barred by limitation and the delay cannot be condoned the same is **dismissed**. All pending applications are accordingly **disposed of**.

(**AAMER FAROOQ**)  
JUDGE

Announced in Open Court this 15<sup>th</sup> day of April, 2020.

JUDGE