

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

F.A.O. No.113/2016

Munawar Ahmed, etc.
Versus
Muhammad Ashraf Shahid

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	15-09-2020	Mr Faisal Ajaz Sh., Mr Qasir Abbas, Advocates for appellants. Mr Mir Afzal Malik, Advocate for respondent.

This appeal is directed against order, dated 05-10-2016, passed by the learned Additional District Judge-VII (West), Islamabad, whereby application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (*hereinafter referred to as the 'CPC'*) was dismissed.

2. The facts, in brief, are that the respondent had instituted a suit on 05-05-2014 under the Defamation Ordinance, 2002 (*hereinafter referred to as the 'Ordinance of 2002'*). Summons were issued to defendants/appellants. Appellants no.1, 2 and 6 joined the proceedings in response to service of summonses while respective memos of appearance were submitted by a learned counsel on behalf of the others. The appellants were granted an opportunity to submit their respective written statements. The appellants chose not to do so and, therefore, vide order, dated 09-01-2015, an opportunity was yet again extended subject to payment of costs. The appellants/ defendants however

did not submit their written statements and consequently their right was struck-off vide order, dated 12-01-2015. The appellants/ defendant absented themselves from the proceedings and consequently the learned trial court decreed the suit vide judgment and decree, dated 16-05-2015. The appellants did not challenge the said judgment and decree. Belatedly they filed an application under Order IX Rule 13 of CPC seeking setting aside of the judgment and decree. The said application was filed on 14-03-2016 i.e. after more than ten months from the date of the decree. The learned court, after affording an opportunity of hearing to the appellants, dismissed the application vide the impugned order, dated 05-10-2016. It is noted that the application filed under Order IX Rule 13 of CPC was filed jointly by all the appellants.

3. The learned counsel for the appellants has contended that; three of the appellants were not served and, therefore, to their extent the judgment and decree is not executable; the learned counsel has placed reliance on judgment titled '*Malik Khawaja Muhammad and 24 others v. Marduman Babar Kahol and 29 others*' [1987 SCMR 1543] in support of his contention that merely submission of memo of appearance is not sufficient to non suit a party; the factum of knowledge is crucial to attract the period prescribed for limitation.

4. The learned counsel for the respondent on the other hand has argued that the impugned order does not suffer from any legal infirmity; the appellants had

failed to avail their remedy within the prescribed limitation period; the application filed under Order IX Rule 13 of CPC was hopelessly time barred.

5. The learned counsels have been heard and the record perused with their able assistance.

6. It is an admitted position that some of the appellants had joined the proceedings after being served while on behalf of the others respective memos of appearance were submitted. Those appellants who had joined the proceedings chose to absent themselves from the proceedings and no plausible explanation was given to the satisfaction of the court. A learned counsel had also filed respective memos of appearance on behalf of the other appellants. There is nothing on record to show that the learned counsel had acted without the consent of the appellants on whose behalf the memos of appearance were submitted. The appellants who had joined the proceedings later chose to absent themselves and failed to seek remedy within the time prescribed under the law.

7. It is settled law that delay defeats equity. Equity leans in favour of a vigilant litigant. The law of limitation is not considered a mere formality and is required to be observed as being of mandatory nature. These principles rest on the foundation that lapse of time creates rights in favour of the other party and, therefore, burdening the party which fails to act within the stipulated time, to demonstrate sufficient and satisfactory cause/reason for delay regarding each day. A

person may have an enforceable right, but if he/she fails to enforce the said right within the time stipulated by law, then the right becomes unenforceable. Reliance for these principles is placed on '*State Bank of Pakistan through Governor Versus Imtiaz Ali Khan*' [2012 SCMR 280], '*Ghulam Sarwar Versus Amir Hussain*' [2004 SCMR 944], '*Lahore Development Authority Versus Mst. Sharifan Bibi*' [PLD 2010 S.C. 705] and '*Shahid Pervaiz alias Shahid Hameed Versus Muhammad Ahmad Ameen*' [2006 SCMR 631]. It has been rightly pointed out by the learned trial court vide the impugned order that the limitation in this case is governed under section 164 of the Limitation Act, 1908 which is 30 days. Reliance is placed on the judgment of this Court titled '*Akram Rashid v. Hamid Ali Khan*' [2015 CLC 1290].

8. The learned counsel for the appellants, despite his able assistance, was not able to persuade this Court that the learned court while passing the impugned order had committed error or that discretion was exercised arbitrarily or in a fanciful manner.

9. For the above reasons, this appeal is without merit and is, therefore, accordingly **dismissed**.

(CHIEF JUSTICE)