

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.3251/2021

Zabeel Bashir.

Versus

The Additional District Judge (West), Islamabad & others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(03)	15.11.2021	Mr. Saif Ul Islam Sindu, Advocate for the petitioner. Sardar Arshad Mehmood Khan, Advocate for respondent No.3.

The petitioner is aggrieved by judgment dated 12.07.2021, passed by the learned District Court (West), Islamabad, pursuant to which his appeal against order passed by the learned Judge Family Court dated 12.01.2021 was dismissed on the grounds of limitation.

2. The learned counsel for the petitioner has submitted that the appeal has been dismissed on the grounds of limitation without taking into account Section 12 of the Limitation Act, 1908 ("**Act**"). He has submitted that the impugned order was passed on 12.01.2021 and the petitioner applied for a copy of the said order on 18.01.2021, which was prepared and handed over to him on 27.01.2021. He has further submitted that in view of Section 12 of the Act nine days are to be excluded in calculating the limitation period. The statutory period for

filing of the appeal after exclusion of the said period would have been extended till 20.02.2021 and the appeal was filed on 16.02.2021 and was consequently within the period of limitation. He has further submitted that this Court through Notification No.F.(01)/Genl/IHC/9770 dated 30.09.2021 has clarified that limitation period for purposes of Section 12 of the Act could not be taken into account for purposes of filing any suit, petition and appeal etc. from 24.03.2020 to 30.09.2021 in view of the emergency situation that has emerged due to Covid-19. He has relied on this notification and submitted that the appeal ought to have been heard on its merits, even if it was beyond the limitation period as held by the learned appellate Court.

3. The learned counsel for respondent No.3 has stated that the appeal was filed on 16.02.2021 alongwith a copy of the impugned order, which reflected that the said order had been applied for and copy received on 16.02.2021 and in view of such facts that the impugned order was passed.

4. Through notification dated 30.09.2021 this Court affirmed that an exception to the ground of limitation had been created for a period starting on 24.03.2020 and expiring on

30.09.2021 to cope with the emerging situation arising out of the Covid-19 pandemic and ensure that delay in assertion of legal rights due to the pandemic does not result in defeating the valuable rights of citizens. The benefit of such notification has to be extended fairly and evenly to all litigants in view of Article 4 of the Constitution which affords equal protection of law to all citizens. Given that the appeal was filed within the period for which limitation has admittedly been excluded under the notification of this Court, the learned appellate Court ought to have heard the appeal on merits.

5. In view of the above, this petition is **allowed** and the impugned judgment dated 12.07.2021 is set-aside. The appeal filed by the petitioner will be deemed pending before the learned Additional District Court (West), Islamabad. The parties are directed to appear before the learned Additional District Court (West), Islamabad on 22.11.2021. Given that this is a family matter, this Court expects that the learned Additional District Court (West), Islamabad will decide the matter with alacrity within a period of 30-days.

(BABAR SATTAR)
JUDGE