

**JUDGMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**FAO No.14 of 2014.**

*National Highway Authority through its Chairman*  
*Vs.*  
*M/s Husnain Cotex Limited through its Director & another*

***Appellant's by:*** ***Mr. Ahmed Ata-ur-Rehman, Advocate for the petitioner.***  
***Respondents by:*** ***Mian Muhammad Athar, Advocate for respondents.***  
***Date of Decision:*** ***25.03.2015.***

**AAMER FAROOQ, J.-** The present appeal is directed against order dated 03.07.2013 passed by this Court in Civil Suit No.36/2012 whereby the objections filed by the appellant against 'Award' rendered by the Arbitrator were dismissed and the same was made Rule of the Court.

2. The appellant awarded two contracts to respondents for widening and improvement of National Highway N-20 between Quetta to Kalat and Quetta to Chamman (known as ICB-2 & ICB-4 respectively). In this behalf the agreement for ICB-2 was signed on 06.05.2006 and the completion date was 23.11.2008. Similarly, the agreement for ICB-4 was signed on 06.02.2006 and the completion date was 16.09.2008. Dispute arose between the parties and the respondents invoked the arbitration clause in the agreement and it was agreed that dispute shall be resolved by the parties through arbitration and in this regard Arbitrator was appointed. The learned Arbitrator announced the Award on 26.03.2013, in favour of the respondents. The respondents filed an application under section 14 of the Arbitration Act (the Act) for making Award Rule of the Court (C.S.No.36/2012). The appellants filed objections to the Award which were dismissed vide order dated 03.07.2013 and the Award was made Rule of the Court. The appellant assailed the above mentioned order of this Court before the Hon'ble Supreme Court of Pakistan in CPLA No.1510/2013 which was disposed of as not pressed on the ground that the

appellant wanted to avail the remedy under section 39 of the Act, alongwith an application for condonation of delay. The instant appeal was filed on 08.02.2014 alongwith an application under sections 5 and 14 of the Limitation Act for condonation of delay in filing the appeal (C.M.No.1/2014 in FAO No.14/2014).

2. Learned counsel for the respondents at the outset submitted that the appeal is barred by limitation and hence not maintainable. In this regard learned counsel for the respondents submitted that under Article 151 of the Limitation Act, 1908 the period of limitation for filing appeal is twenty (20) days whereas the appeal has been filed after a considerable delay. It was further submitted that in the application for condonation of delay no plausible ground has been taken, for condonation, except that the instant appeal has been filed on the direction of the August Supreme Court of Pakistan in CPLA No.1510/2013. It was further contended that the application under section 14 is not maintainable with respect to the appeals and in so far as section 5 *ibid* is concerned the criteria for condonation of delay is sufficient cause, whereas no ground has been agitated in the application which constitutes sufficient cause.

3. Learned counsel for the appellants, *inter alia*, submitted that the remedy before the Hon'ble Supreme Court was availed in good faith on advice of the counsel and the appellant had not been negligent in any manner in filing the appeal before a wrong forum. It was further contended that in the circumstances of the case, following the advice of the counsel constituted sufficient cause within the meaning of the word as provided in section 5 of the Limitation Act, 1908. Learned counsel in support of his contentions placed reliance on cases titled "Haji Abdul Wahid vs. Syed Siraj-ud-Din" (1998 SCMR 2296), "Sherin & four (4) others vs. Fazal Muhammad and four (4) others" (1995 SCMR 584) and "Ayub Ali Rana vs. Dr. Carlite Pune" (PLD 2002 SC 630).

4. Admittedly, the present appeal has been filed beyond the period of limitation prescribed for the same. However, an application (C.M. No.1/2014) for condonation of delay has been filed alongwith an affidavit of representative of the appellant seeking condonation on the ground that the appellant with bonafide mistake filed appeal before the August Supreme Court of Pakistan and subsequently was directed by the Apex Court to file the same in this Court. The application for condonation has been controverted by the respondents and in this regard a counter affidavit has been filed.

5. The application for condonation of delay has been moved under sections 5 & 14 of the Limitation Act, 1908. The scope of both the sections is completely different. In this behalf for the sake of brevity both the provisions are reproduced below and are as follow:

*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 for the time being in force may be admitted after the period of limitation prescribed therefore, 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.*

*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 proceedings, whether in a Court of the 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 alike 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 alike nature, is unable to entertain it.*

The plain reading of the referred sections show that section 14 of the Act is not applicable in case of appeal, and is attracted in the case of suits. Section 5, however, is applicable to appeals as well and the Court may condone the delay if the applicant is able to show that there was sufficient cause for not filing the appeal in time. The question before this Court while deciding the application for condonation of delay is whether filing of appeal before a wrong forum on the advice of counsel is a sufficient cause within the meaning of section 5 *ibid*.

In **PLD 2002 SC 630** supra the Hon'ble Supreme Court of Pakistan on the issue in hand observed as follows:

***"There can be no cavil with the proposition that mere wrong advice by a counsel in the matter by itself in isolation is not considered as sufficient ground for condonation of delay but each case has to be considered in which question of limitation is raised keeping in view peculiar circumstances of that case."***

In **1995 SCMR 584**, the following observation was made by the Apex Court:

*“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” within the meaning of section 5 for condonation of the delay.”*

In case titled “Abdul Ghani vs. Ghulam Sarwar” (**PLD 1977 SC 102**) the Hon’ble Supreme Court of Pakistan interpreted the terms sufficient cause and held it to mean as circumstances beyond the control of the party.

In case titled “Syed Sibtain Raza Naqvi vs. Hydrocarbon Development” (**2012 SCMR 377**) the Hon’ble Apex Court observed as follows:

*“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.”*

In case of “Masood Ahmed vs. UBL” (**1992 SCMR 424**) it was observed that although section 14 does not apply to appeal but its contents can be made applicable by analogy so that if a litigant shows that he had been in good faith prosecuting another civil proceedings the same may be taken as sufficient cause for condonation of appeal within the meaning of section 5 *ibid*.

In “M/s Nida-e-Millat vs. Commissioner Income Tax” (**2008 SCMR 284**) it was observed that the expiry of limitation creates a right in favour of the opposite party; similarly in “Rehmat Din and others vs. Mirza Nasir Abbas and others” (**2007 SCMR 1560**) it was held that the discretion lies with the Court whether to condone the delay and the discretion should not be exercised arbitrarily. It was further observed as follows:

***“Law of limitation is required to be construed strictly coupled with the maxim as mentioned above that each day of delay has to be explained by the party concerned where long periods of delay were not explained, therefore, application merits dismissal as time-barred. Petitioners came to know about dismissal through friend three months later. No ground to condone delay of 84 days. See Sher Muhammad’s case 1981 SCMR 212. Even if an important point is involved in a case that would not, in any way, allow the Court to use its discretion in an arbitrary way to override the provisions of the Limitation Act and the Supreme Court Rules. ”***

6. The application for condonation of delay does not specify whether the appellant was diligent in filing the case before the Apex Court and it was done so under a bonafide mistake. Section 39 of the Act is specific and provides that the remedy of appeal is available on the rejection of the objections. Furthermore, the appellant is an Organization having an internal law department and various other segments. The assertion by the appellant that it followed the advice of the counsel and, therefore, filed proceedings before the Apex Court is not tenable. Moreover bare perusal of the order of Hon’ble Supreme Court of Pakistan in CPLA No.1510/2013 makes it clear that no direction was issued by the Court to the appellant to file appeal before this Court, in fact the same was done by the appellant on its own accord. Therefore, we are of the opinion that in the facts and circumstances of the case it cannot be said that there was a sufficient cause which prevented the appellant in filing the appeal within the time and hence case for condonation of delay is not made out.

7. In view of the foregoing discussion the application for condonation of delay is dismissed with the result that the appeal filed by the appellant is also dismissed as being barred by limitation.

(ATHAR MINALLAH)  
JUDGE

(AAMER FAROOQ)  
JUDGE

Altaf Malik\*  
Blue slip  
added

Approved for reporting