

FORM NO.HCJD/C  
JUDGMENT SHEET  
IN THE ISLAMABAD HIGH COURT,  
ISLAMABAD

JUDICIAL DEPARTMENT

**C.R. No. 80 of 2010**

**Akram Rashid.**                      **Versus**                      **Hamid Ali Khan.**

Date of hearing:                      27.02.2015.

Petitioner by:                      Mr M. Kowkab Iqbal, Advocate.

Respondent by:-                      Mr Mardan Ali Jural, Advocate.

**Athar Minallah, J:**                      This civil revision is directed against the impugned order dated 20-11-2009, passed by the learned Additional District Judge, Islamabad; whereby the learned Judge dismissed the appeal filed by the present petitioner / defendant and affirmed the ex-parte judgment and decree dated 15-01-2008, passed by the learned Civil Judge, Islamabad.

2.                      The facts, in brief, are that the respondent / plaintiff filed a suit for declaration, permanent and mandatory injunction along with recovery of damages of Rs.25,000/- against the present petitioner / defendant. The respondent / plaintiff had appeared in the test conducted for seeking admission in a "*Diploma Course in Iqra Training Centre for Technical Education*" (*hereinafter referred to as the "Centre"*). The Centre is affiliated with "*International Islamic University Islamabad*" (*hereinafter referred to as the "University"*). He stated that he had passed the written test as well as the interview. However, due to late deposit of admission fee, his name could not be included in the merit list. It is pertinent to mention that the designation of the petitioner / defendant (Muhammad Akram) was described in the suit as being 'in charge' of the Centre. The petitioner contested the suit by filing his written statement. The petitioner

/ defendant participated in the proceedings before the trial Court. However, at some stage neither the petitioner / defendant, nor any one on his behalf appeared before the Court and, therefore, ex-parte proceedings were initiated against him. Consequently, an ex-parte decree dated 15-01-2008 was also passed by the learned Civil Judge, Islamabad. The petitioner / defendant filed an application after considerable delay, dated 30-05-2008, under Order IX Rule 13 of CPC for setting aside the ex-parte decree dated 15-01-2008. The grounds taken in the application were that the petitioner / defendant left the post of being 'Incharge' of the Centre in August 2005 and, therefore, he did not pursue the case, expecting that the next Incharge would take the necessary steps. The application was dismissed by the learned Civil Judge, Islamabad vide order dated 08-05-2009, inter alia, on the ground that the application was barred by time and was not supported by a separate application for condoning the delay. The petitioner / defendant assailed the order dated 08-05-2009, before the learned Additional District Judge, Islamabad. The appeal was dismissed vide order dated 20-11-2009. The instant revision petition assails the said order.

3. Mr M. Kowkab Iqbal, ASC. appeared on behalf of the petitioner and contended that, admittedly, the suit was dismissed as withdrawn to the extent of the main relief seeking declaration, permanent and mandatory injunction pursuant to the statement of the learned counsel appearing on behalf of the respondent / plaintiff and, therefore, the learned trial Court could not have granted the consequential relief of damages. It is further contended that both the lower Courts committed an illegality while exercising jurisdiction vested under the law. The petitioner had not acted in his private capacity and, therefore, could not have been sued as such. The admissions were conducted by a Committee, consisting

of four members, constituted by the Centre pursuant to the instructions of the University. The Centre had engaged a counsel for the petitioner / defendant, who had filed the written statement explicitly mentioning therein that the petitioner / defendant had not acted in his private capacity. The petitioner, after leaving his post as 'Incharge' of the Centre on 29-08-2005 did not pursue the case on the assumption that the Centre would fulfill its obligations in this regard. It was, therefore, contended that the petitioner / defendant was not at fault. It has also been contended that both the lower Courts have decided the matter by misreading and non-reading of the evidence on record.

4. On the other hand, Mr Mardan Ali Jural, Advocate High Court, has contended that the order passed by the learned Civil Judge, Islamabad dated 08-05-2009, is well reasoned and, therefore, does not require any interference. Likewise, the learned Appellate Court also took all the relevant matters into consideration and, therefore, the current findings are in accordance with the law. The learned counsel has stressed that the petitioner / defendant, by filing the written statement and participating in the proceedings before the trial Court, subsequently absented himself and, therefore, the limitation in such circumstances is governed under *Article 164 of the Limitation Act, 1908*, rather than *Article 181* *ibid*. It is further contended that in such a case the petitioner / defendant was required to explain the delay for each day. Admittedly, neither an application was filed for condoning the delay nor the same was explained as required by law. He, therefore, strenuously urged for dismissal of the instant petition. In support of his contentions, he has relied on *PLJ 1998 Peshawar 14 (Atta ur Rehman Baig, etc Versus Barey Khan)*, *2008 SCMR 287 (Secretary Education Department etc Verus Asfandiar Khan)*, *2013 MLD 476 (Abrar Hussain etc Versus Saeeda Fatima*

*etc), 2012 MLD 1736 (Abdul Hameed Versus Muhammad Giyas Sajid), 1992 MLD 251 (Fazal Ahmed etc Versus Naeem Akhtar etc), 2013 YLR 777 (Khursheed Alam Versus Ghulam Nabi etc) and 2014 YLR 128 (Habibullah Versus Mehar etc).*

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

6. The petitioner / defendant had admittedly participated in the proceedings and, thereafter, absented himself, resulting in the suit being decreed ex-parte. The perusal of the suit reveals that the petitioner / defendant was made a party by name and he was fully aware that the Centre had not been made a party. He filed the written statement, and at some stage of the proceedings a counsel also appeared on his behalf. The sole question before this Court is to determine whether the trial Court and the Appellate Court committed any illegality or material irregularity while passing the respective impugned judgments and decrees. It is also noted that the question for determination by this Court is whether *Article 164 of the Limitation Act 1908* was applicable or *Article 181* thereof. It is settled law that once the defendant had participated in the proceedings and then absented himself, the provisions of *Article 164 of the Limitation Act, 1908*, will be attracted, which provides a period of thirty days. Moreover, this Court concurs with the learned counsel for the respondent / plaintiff that in case of delay the petitioner / defendant was required to explain and give reasons for each day beyond the prescribed time of limitation. Admittedly, an application for condoning the delay was neither filed, nor is the reason for the delay sufficient or satisfactory. Reliance is placed on 2008 SCMR 287 (Secretary Education Department, Govt. of NWFP Peshawar and others Versus Asfandiar Khan), 2007 SCMR 449 (Iftikhar

Ahmad Versus Mst. Jehan Ara and 03 others), 2006 SCMR 631 (Shahid Pervaiz alias Shahid Hameed Versus Muhammad Ahmad Ameen), 2005 SCMR 609 (Honda Atlas Cars, Pakistan Ltd. Versus Honda Sarhad Pvt. Ltd. and others), 1996 SCMR 596 (Muhammad Saleem and others Versus Mukhtar Ahmad), 1995 SCMR 936 (Alam Ali Syed Versus United Bank Limited, Lahore) and PLD 2011 S.C. 676 (Dr Muhammad Shahid Mian and another Versus Faiz ur Rehman Faizi).

7. Even otherwise, there is no force in the argument of the learned counsel for the petitioner / defendant that he had inadvertently assumed that as he had relinquished the post of being 'Incharge' of the Centre, therefore, he was not required to pursue the proceedings in the suit. Ignorance of law cannot be treated as an excuse, nor does the law help or come to the rescue of an indolent.

8. 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 2012 SCMR 280 (State Bank of Pakistan through Governor Versus Imtiaz Ali Khan), 2004 SCMR 944 (Ghulam Sarwar Versus Amir Hussain), PLD 2010 S.C. 705 (Lahore Development

Authority Versus Mst. Sharifan Bibi) and 2006 SCMR 631 (Shahid Pervaiz alias Shahid Hameed Versus Muhammad Ahmad Ameen).

9. The litigant petitioner / defendant was indeed the 'Incharge' of the Centre and was made the defendant by name. The petitioner/ defendant could at least have filed an application for condoning the delay, by giving sufficient and satisfactory reasons for each day. The learned counsel for the petitioner / defendant has attempted to argue the case on the merits of the case and, therefore, the same cannot be considered as the petitioner / defendant has been unable to persuade this Court that the learned Courts below had committed any illegality or material irregularity in dismissing the application for setting aside of the ex-parte decree on the sole ground of limitation. Both the Courts have exercised jurisdiction in accordance with law and no legal infirmity could be pointed out.

10. For what has been stated above, there is no reason for this Court to interfere with the concurrent findings of the learned lower Courts, and, therefore, the instant revision petition is hereby **dismissed**.

(Athar Minallah)  
Judge

Announced in the open Court on 05-05-2015

Judge.

*Approved for reporting.*