

Form No: HCJD/C  
**JUDGMENT SHEET.**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**Civil Revision No.249 of 2017**

***Capital Development Authority through its Chairman etc.***  
***Versus***  
***Ch. Tauseef Ur Rehman etc.***

**Petitioners' by : Mr. Amir Latif Gill, Advocate.**

**Respondents' by : Mr. Mustafa Sherpao, Advocate for  
respondents No.1, 3 & 4.  
Respondent No.2 ex-parte.**

**Date of decision : 15.4.2019.**

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**AAMER FAROOQ, J. -** The facts leading to filing of the instant petition are that the petitioner put to auction plot No.32-A, commercial area F-11 Markaz, Islamabad measuring 2000 Sq. yard on 21.8.2013. Respondents were the highest bidder as they made a bid of Rs.3,5,0000/- per Sq. yard and the total bid was of Rs.710,000,000/-. Petitioner vide letter dated 26.8.2013 apprised the respondents that the competent authority viz the Board of Capital Development Authority has turned down the bid of the respondents. Respondents filed a suit for declaration alongwith other relief before the Civil Court of Islamabad against the petitioner alongwith an application for interim relief; the said

application was allowed by the learned Trial Court. Appellant challenged the order by the learned Trial Court by way of an appeal which was dismissed vide order dated 08.03.2017, hence the petition.

**2.** Learned counsel for the petitioner, *inter-alia*, contends that the respondents have no *locus standi* to file the suit; that no right has accrued to respondents; that since the bid of respondents was not accepted, hence they have no interest in the property.

**3.** Learned counsel for respondents No.1, 3 & 4, *inter-alia*, contended that the instant petition is barred by limitation. In this behalf, it was pointed out that date of decision by the Appellate Court is 08.03.2017 and the limitation provided is ninety (90) days. It was further contended that the date of application for certified copy was 09.03.2017 which was made and ready and delivered on 16.3.2017; that the petition was filed on 17.6.2017, hence is barred by limitation. It was contended that the petition is barred by three (03) days and even Section 5 of the Limitation Act, 1908, is inapplicable. It was contended that even otherwise no reason has been provided in the letter dated 26.8.2013 for refusal of the bid. It was further submitted that alongwith Written Statement the petitioner has not appended the decision by competent authority rejecting the bid of petitioners.

**4.** Learned counsel for the petitioners in rebuttal, *inter-alia*, contended that since the relevant Director had been transferred and

the learned counsel holding the brief was indisposed, hence the petition is barred by limitation.

5. Learned counsels for the parties have been heard and the documents placed on record examined with their able assistance.

6. The date of decision by the Appellate Court is 08.03.2017 and the petitioner applied for the certified copy on 09.03.2017, which was delivered on 16.3.2017, the instant petition was filed on 17.6.2017, hence it is barred by three (03) days. Alongwith petition an application for condonation of delay has been filed under Section 5 of the Limitation Act, 1908. The reasons provided therein are indisposition of the counsel and transfer of the relevant Director, however, no affidavit has been filed alongwith application either by the counsel or the relevant Director. Even otherwise, in light of the law laid down by the Hon'ble Supreme Court of Pakistan in case reported as "Allah Dino and another Vs. Muhammad Shah and others" (2001 SCMR 286), application under Section 5 of the Limitation Act, 1908, is not applicable in the case of civil revision in light of Section 29 (2) of the limitation Act. The relevant portion of the judgment is reproduced and is as follows:

..."5. We have given our anxious thought to the proposition under examination. There is no cavil with the argument that if the Statute governing the proceedings does not prescribe period of limitation, the proceedings instituted thereunder shall be controlled by the Limitation Act as a Whole. But where the law under which proceedings have been launched prescribes itself a period of limitation like under section 115, C.P.C. then benefit of section 5 of the Limitation Act cannot be availed unless it has been made applicable as per section 29(2) of the Limitation Act, as held in the cases (i) The Canara Bank Ltd. v. The Warden Insurance Co. Ltd. (AIR 1935 Bombay 35), (ii) Abdul Ghaffar and others v. Mst. Mumtaz (PLD 1982 SC 572),

(iii) Ali Muhammad and another v. Fuai Hussain and others (1983 SCMR 1239), (iv) Collector of Customs (Appraisement) v. Messrs Saleem Adaya, Karachi (PLD 1999 Karachi 76) and (v) Haji Muhammad Ashraf v. The State and 3 others (1999 MLD 330).

7. Thus, we fail to notice any flaw in the impugned judgment relating to interpretation of section 5 of Limitation Act, qua section 115(2), C.P.C. therefore, no interference is called for”.

Similar view was propounded in cases reported as Citibank N.A vs. Arif Dewan (2016 MLD 773), and Federation of Pakistan through Secretary, Ministry of Foreign Affairs, Government of Pakistan, Islamabad and 5 others Vs. Jamaluddin and others (1996 SCMR 727). The Hon’ble Supreme Court held that while condoning the delay no special treatment is to be given to the federation.

7. During the Course of arguments by learned counsel for the petitioner placed reliance on case reported as “Hafeez Ahmad and others Vs. Civil Judge, Lahore and others” (PLD 2012 SC 400) to submit that even if the civil revision is barred by limitation and there is any illegality the Court can *suo motu* take action. There is no cavil with the principles laid down by the Hon’ble Supreme Court of Pakistan, however, this is only in the case where there is glaring illegality. Admittedly, in the letter impugned by the respondents in their suit dated 26.8.2017 no reason has been provided for refusing the bid; though learned counsel for the petitioner placed reliance on the terms of the bid which laid down that any bid can be rejected without assigning any reason, however, the same needs to be done at spot. The Board has done

so subsequently and the petitioner did not place on record any document to show that the Board deliberated and refused the bid and only a letter intimating the respondents signed by a Director is on record.

**8.** In view of above, the delay in filing of the petition cannot be condoned; hence application (C.M. No.03 of 2017) for condonation of delay is dismissed. Since the petition is barred by limitation hence is dismissed.

**(AAMER FAROOQ)**  
**JUDGE**

\*Niqab M\*