

**ORDER SHEET.**  
**ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

Regular First Appeal No. 132 of 2018

Muhammad Sarfaraz Siyal

*Versus*

Fazal Hussain Khan.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(07)	20.01.2021	Mr. Faisal Iqbal Khan, Advocate for the appellant. Rana Muhammad Yousaf Siddique, Advocate for the respondent.

Through this Regular First Appeal, the appellant has assailed the judgment and decree dated 23.10.2017, passed by learned Civil Judge (West), Islamabad, whereby, the suit filed by respondent for recovery of an amount of Rs. 200,00,000/- (Two Million) on account of damages and financial loss with mense profit till the day of finalization and Rs. 2,00,000/- (Two Hundred Thousand) as litigation cost, was decreed.

02. The civil suit was filed on 24.10.2014 by respondent / plaintiff, the counsel of appellant / defendant submitted his memo of appearance on 22.05.2017 and submitted his *Wakalat Nama* on 03.06.2017 and appeared in Court on almost six dates of hearing but no one appeared on behalf of appellant / defendant on 05.09.2017, hence the ex-parte order was passed and consequently the impugned judgment and decree dated 23.10.2017 was passed by the learned Civil Judge.

03. Being aggrieved of the impugned judgment and decree, the appellant filed an appeal in the Court of learned District & Sessions Judge (west), Islamabad on 22.11.2017, which was proceeded by learned Additional District Judge (West), Islamabad, but the same was returned vide order dated 27.06.2018 due to lack of pecuniary jurisdiction. Lateron, the petitioner has filed the instant appeal before this Court on 19.09.2018.

04. Learned counsel for the appellant *inter-alia* contends that the impugned judgment and decree dated 23.10.2017 is very harsh and against the spirit of natural justice; that the Hon'ble Court has not applied its judicial mind while passing the impugned judgment; the learned trial court has failed to follow the law and dictums laid down by the Superior Courts liberally. The impugned judgment has resulted in great miscarriage of justice and further contends that according to the dictums laid down by Superior Courts, cases are to be decided on merits instead of technicalities, the valuable rights and interest of the appellant have been jeopardized and appellant is suffering from irreparable loss. Period of almost six months has consumed in the Court of learned Additional District Judge (West), Islamabad.

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

06. As it is evident from record that the impugned judgment and decree was passed on

23.10.2017, and the appellant applied for the certified copy of said Judgment on 20.11.2017 which was received by him on 21.11.2017. He filed appeal before the Court of learned District Judge, Islamabad on 22.11.2017 which was returned on 27.06.2018, on the ground that learned court lacked pecuniary jurisdiction. The appellant applied for certified copy of order of learned Additional District Judge, Islamabad on 19.09.2018 and obtained the copy on the same day and on the same day filed appeal before this Court. As the judgment and decree was passed on 23.10.2017 and the appeal was filed before this Court on 19.09.2018 with the delay of about more than 10 months, whereas the time consumed for obtaining certified copy of the order of learned trial Court is 27 days and the time consumed in the Court of learned Additional District Judge being a wrong forum, is more than 07 months. The time consumed for obtaining the certified copy of order of learned Additional District Judge is more than 2 ½ months, whereas the limitation for filing of Regular First Appeal in High Court under article 156 of Limitation Act, 1908 is 90 days, but the instant appeal has been filed after the delay of more than 10 months.

07. The petitioner has consumed almost 07 months in the Court of learned Additional District Judge (West), Islamabad which was a wrong forum, the appeal was returned to the petitioner

vide order dated 27.06.2018 but the petitioner has applied for the issuance of certified copy on 19.09.2018 i.e. after more than 02 months and 15 days, but no cogent reasons have been given for the delay of filing application for obtaining the certified copy which is in addition to delay of almost 07 months consumed before a wrong forum.

08. It is settled principle of law enunciated by the Hon'ble Supreme Court of Pakistan in a case titled as ***“Water and Power Development Authority” (1988 SCMR 1354)***, *“it is well settled that after the prescribed period of limitation has elapsed, the door of justice is closed and no plea of injustice, hardship or ignorance can be of any avail unless the delay is properly explained and accounted for”*. That in the recent authoritative judgment of larger bench of the Honb'le Supreme Court of Pakistan titled as ***“Khushi Muhammad and others V. Mst. Fazal Bibi and other” (PLD 2016 SC 872)***, it has been laid down that *“before considering the propositions above, it is expedient to mention certain salient features which have been settled over a period of time by the superior Courts for the purposes of interpretation of the law of limitation. These are:-*

- i. The law of limitation is a statute of repose, designed to quieten title and to bar stale and water-logged disputes and is to be strictly complied with. Statutes of limitation*

*by their very nature are strict and inflexible.*

*The Act does not confer a right; it only regulates the rights of the parties. Such a regulatory enactment cannot be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies are fully complied with in letter and spirit. There is no scope in limitation law for any equitable or ethical construction to get over them. Justice, equity and good conscience do not override the law of limitation. Their object is to prevent stale demands and so they ought to be construed strictly;*

- ii. The hurdles of limitation cannot be crossed under the guise of any hardships or imagined inherent discretionary jurisdiction of the court. Ignorance, negligence, mistake or hardship does not save limitation, nor does poverty of the parties;*
- iii. It is salutary to construe exceptions or exemptions to a provision in a statute of limitation rather liberally while a strict construction is enjoined as regards the main provision. For when such a provision is set up as a defence to an action, it has to be clearly seen if the case comes strictly within the ambit of the provision;*
- iv. There is absolutely no room for the exercise of any imagined judicial discretion vis-à-vis*

*interpretation of a provision, whatever hardship may result from following strictly the statutory provision. There is no scope for any equity. The court cannot claim any special inherent equity jurisdiction;*

- v. *A statute of limitation instead of being viewed in an unfavorable light, as an unjust and discreditable defence, should have received such support from courts of justice as would have made it what it was intended emphatically to be, a statute of repose. It can be rightly stated that the plea of limitation cannot be deemed as an unjust or discreditable defence. There is nothing morally wrong and there is no disparagement to the party pleading it. It is not a mere technical plea as it is based on sound public policy and no one should be deprived of the right he has gained by the law. It is indeed often a righteous defence. The court has to only see if the defence is good in law and not if it is moral or conscientious.*
- vi. *The intention of the Law of Limitation is not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right.*
- vii. *The Law of Limitation is an artificial mode conceived to terminate justiciable disputes. It has therefore to be construed strictly with a leaning to benefit the suit or;*

viii. *Construing the Preamble and Section 5 of the Act it will be seen that the fundamental principle is to induce the claimants to be prompt in claiming rights. Unexplained delay or laches on the part of those who are expected to be aware and conscious of the legal position and who have facilities for proper legal assistance can hardly be encouraged or countenanced”.*

09. On the question of consuming of time before the wrong forum that is one lacking of jurisdiction, it was held that *“the act of approaching a wrong forum must be accounted for: it should be established that due to some honest, bona fide and genuine ambiguity in the law or in fact, a party or his counsel was led astray in terms of approaching a wrong forum. Mere incompetence of the counsel, inadvertence, negligence or ignorance of law attributable to him and /or overlooking of the record by the counsel cannot constitute sufficient cause ipso facto, but the factor(s) which misled the legal counsel, including any ambiguity in the law, causing him to file the appeal before the wrong forum must be indicated. Mere wrong advice of counsel is not an adequate ground per se to constitute sufficient cause because if this rule is accepted, the centuries tested rule that ignorance of law is no excuse would stand violated. Besides, the above factors which caused ambiguity and misled the*

*appellant (or his counsel as the case may be) have to be stated with clarity and precision in the application for condonation of delay and proved on the record”.*

10. Since the appeal was filed beyond the prescribed period of limitation and no cogent reasons have been given for condonation of delay under section 5 of the Limitation Act, 1908, hence request for condonation of delay is turned down and the application filed in this behalf (CM 03/18) is dismissed.

11. In view of foregoing, the instant appeal is **dismissed** being time barred.

(AAMER FAROOQ)  
JUDGE

(TARIQ MEHMOOD JAHANGIRI)  
JUDGE

Bilal

**Approved for reporting.**