

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Naeem Akhter Afghan
Justice Shahid Bilal Hassan

CPLA No.694-P of 2024

*(Against the judgment dated 19.07.2024 passed by
Peshawar High Court, Peshawar in C.R.No.365-P of 2024)*

*Secretary to Government of Khyber Pakhtunkhwa Communication &
Works Department, Peshawar & others*

... *Petitioner(s)*

Versus

*M/s Parcon Associate Government Contractors through Muhammad Haroon
and others*

... *Respondent(s)*

For the Petitioner(s): Mr. Shah Faisal Ilyas, AAG Khyber
Pakhtunkhwa

For Respondent: N.R.

Date of Hearing: 17.02.2025

ORDER

SHAHID BILAL HASSAN, J. This petition has been filed against the judgment dated 19.07.2024 passed by Peshawar High Court, Peshawar, whereby revision petition, filed by the petitioner, against judgment and decree dated 14.02.2024 delivered by appellate Court dismissing appeal as well as judgment and decree dated 17.07.2021 making award of the arbitrators as rule of Court by trial Court, has been dismissed.

2. Facts, in concision, are as such that respondents filed an application under section 14(2) of the Arbitration Act, 1940, wherein the matter was referred to the Arbitrators, who submitted the award and objections were invited on the same. The petitioners filed objections; however, after hearing the parties, the trial Court dismissed the objections, consequently, the Award dated 03.02.2021 was

confirmed and made as a rule of Court by the trial Court vide judgment and decree dated 17.07.2021. The petitioner(s) after obtaining certified copies preferred an appeal before the Peshawar High Court on 14.10.2021, which came up for hearing on 23.10.2023 and the Peshawar High Court while observing the decree granted in favour of the respondents i.e. for Rs.17,150,988 was less than Rs.50,000,000/- in juxtaposition with the pecuniary jurisdiction of the civil court, directed the office to send the appeal, in original, alongwith the record to the District Judge, Peshawar for its decision, in accordance with law. The appellate Court vide order dated 14.02.2024 dismissed the appeal being barred by time. The petitioners being aggrieved filed revision petition before the Peshawar High Court but remained unsuccessful as the same was dismissed vide impugned judgment dated 19.07.2024; hence, the instant petition.

3. Heard. It is not the case that the petitioners did not participate in the proceedings before the trial Court rather they joined the proceedings and also filed objections against the Award of the Arbitrators, which were dismissed by the trial Court, whereafter the Award was made rule of the Court vide judgment and decree dated 17.07.2021. The petitioners filed application for obtaining certified copies of the same on 05.10.2021, which were delivered on 06.10.2021 and the petitioners preferred appeal before the Peshawar High Court on 14.10.2021, which came up for hearing on 23.10.2023 and the same was ordered to be sent, in original, alongwith the record to the District Judge, Peshawar for its decision in accordance with law. It is not fault of the Court that the petitioners preferred appeal before the wrong forum so as to seek condonation of delay as provided under section 14 of the Limitation Act, 1908 because for extending benefit under the above said provision 'good faith' and 'due diligence' has to be proved, which is lacking in this case, because nothing as such has been brought on record by the petitioners; therefore, the appellate Court has rightly declined the relief so claimed by the petitioners for the reasons that the conduct of the petitioners was evident from the fact that they applied for obtaining certified copies of the judgment and decree dated 17.07.2021 passed by the trial Court on 05.10.2021, which were delivered to them on 06.10.2021 and they preferred appeal before the Peshawar High Court on 14.10.2021, after further delay of

four days of the delivery of certified copies, which vividly shows that they did not pursue the case diligently, even before the wrong forum, therefore, the benefit of section 14 of the Limitation Act, 1908 could not be extended to them especially when they did not file an application in this regard. Such like indolent persons cannot be extended discretionary relief, as after passage of prescribed period of limitation valuable rights accrue in favour of the opposite party. It has been held by this Court in judgment¹ that:

'It is settled by now that government departments are also treated like an ordinary party before the Court and the same treatment has to be given to the government department as is given to the ordinary litigants. Besides the above, in affidavits no sufficient cause was given by the learned counsel for his non-appearance or non-appearance of the representative of the department so the limitation cannot be taken as a mere technicality as by expiry of period of limitation, valuable rights accrue to the other party.'

4. It is observed that delay of time in filing of appeal, application or suit may be condoned but subject to plausible and reasonable explanation. One who seeks condonation of delay has to explain each and every day delay but in the instant case, the petitioners could not put-forward reasonable and plausible justification/explanation for filing the appeal after about two years of passing of the judgment and decree by the trial Court and ground taken up by the petitioners that they preferred earlier appeal before the High Court cannot be considered as a reasonable justification. This Court has consistently held in various judgments that Government cannot claim to be treated in any manner differently from an ordinary litigant.² Time consumed in pursuing appeal in wrong forum cannot be condoned under S. 5 of Limitation Act, 1908.³ Time spent in pursuing proceedings before wrong appellate forum could not be excluded for the purposes of filing of an appeal. If appeal is barred by time, provisions of S.5 of Limitation

¹ Messrs SKB-SNK Joint Venture Contractors through Regional Director v. Water and Power Development Authority and others (2022 SCMR 1615)

² East Pakistan v. Abdul Hamid Darfi and others (1970 SCMR 558), Commissioner of Income Tax v. Rais Pir Ahmad Khan (1981 SCMR 37) & Federation of Pakistan v. Niaz Ahmad (1997 SCMR 959)

³ Mst. Khadija Begum and 2 others v. Mst. Yasmeen and 4 others (PLD 2001 SC 355)

Act, 1908, could only be invoked, that too, by showing sufficient cause.⁴

5. The forum of appeal is regulated by the jurisdictional value in the plaint. In the presence of section 18 of the West Pakistan Civil Courts Ordinance, there could be no doubt or complication to determine the forum of appeal. Section 5 and 14 of the Limitation Act would come into play only if the delay appears to be condonable because of the petitioners prosecuting their case with due diligence. The time consumed in pursuing the appeal in wrong forum could not be condoned under section 5 of the Limitation Act⁵. In Abdul Ghani⁶ case it was observed that for bringing the case within the ambit of principles governing section 14, the petitioners have to show that they prosecuted their remedy before the wrong forum in good faith. Choosing wrong forum lacking due care and attention were not considered as acts done in good faith.⁷ The principle that the act of Court shall prejudice nobody is not attracted in the present case, as the delay was on account of the petitioners' own negligence and not due to the act of Court. The exclusion of time for filing an appeal in wrong Court was considered in Abdul Ghani⁸ case and it was observed at page 107 that:

"Now if an appellant proves that he filed his appeal in the wrong Court despite due care and attention it means that the presentation of the appeal in the wrong Court was on account of circumstances beyond his control. No doubt, what such circumstances are must depend on the facts and circumstances of each case, and in Kunwar Rajendra Bahadur Singh's case, Sir George Rankin set aside the finding of the Chief Court that the appellant's Advocate had been very negligent in filing the appeal in the wrong Court because the facts relevant to the question of the Court in which the appeal was to be filed were very complicated. Similarly, an appellant can bring his case under section 5 if he can show that there is some ambiguity in the law governing the forum in which the appeal is to be filed. Or, to take another example, an appellant can rely on section 5, if he can show that he was misguided by the practice of the Court or by an erroneous judgment of the Court but, in the instant case, the provisions of section 18 of the West Pakistan Civil Courts Ordinance are plain beyond any doubt and as there is also no complication whatsoever about the facts relevant to the question of the proper forum for filing the appeal, it is clear that the

⁴ Dr. Syed Sibtain Raza Naqvi v. Hydrocarbon Development and others (2012 SCMR 377)

⁵ Ghulam Ali v. Akbar alias Akoor and another (PLD 1991 SC 957)

⁶ Abdul Ghani v. Mst. Mussarat Rehana (1985 CLC 2529)

⁷ Government of Pakistan v. Rafi Associates Limited (1985 CLC 2234 Kar.)

⁸ Abdul Ghani v. Ghulam Sarwar (PLD 1977 SC 102)

presentation of the appeal in the District Court was an act of gross negligence.'

The rule laid down in judgment⁹ that if the appellant is able to establish that he followed the remedy before a wrong forum, acting with due care and caution, the delay in filing the appeal may be condoned is not attracted in this case, because of conduct of the petitioner(s) in the circumstances outlined above which depict their carelessness and negligence.¹⁰ This Court in judgment¹¹ has held that:

'11. The law of limitation is founded on the principle of "Vigilantibus non dormientibus jura subveniunt, " meaning "the law assists the vigilant, not those who sleep on their rights." This principle forms a cornerstone of justice, reinforcing that the law favors those who act promptly and diligently. It emphasizes that individuals must be active in asserting their rights and those who fail to do so within a reasonable time should not expect the courts to intervene in their favor.

12. Law of limitation is not just a technical formality but a crucial component of a well-functioning legal system. It provides a framework that ensures legal matters are addressed promptly, preventing evidence from being lost, memories from fading, and facts from becoming distorted over time. Furthermore, it protects potential defendants from being subjected to claims long after they could reasonably expect such challenges, fostering certainty and finality in legal matters. By requiring claimants to act within a specific period, the law promotes diligence and responsibility in the pursuit of legal remedies. Those who neglect to assert their rights, as in this case, effectively forfeit their ability to challenge matters that could have been addressed much earlier.'

6. Additionally, this Court in judgment¹² has settled the following salient features for the purposes of interpretation of the law of limitation:

(i) The law of limitation was a statute of repose, designed to quieten title and to bar stale and water-logged disputes and was to be strictly complied with. Statutes of limitation by their very nature were strict and inflexible. Law of limitation does not confer a right; it only regulates the rights of the parties. Such a regulatory enactment could not be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies were fully complied with in letter and spirit. There was no scope in law of limitation for any equitable or ethical construction. Justice, equity and good conscience did not override the law of limitation. Object of law of

⁹ Syed Haji Abdul Wahid and another v. Syed Sirajuddin (1998 SCMR 2296)

¹⁰ Raja Karamatullah and 3 others v. Sardar Muhammad Aslam Sukhera (1999 SCMR 1892)

¹¹ Akhtar Nasir Ahmed v. Province of Punjab through District Collector Gujrat and others (PLD 2024 Supreme Court 1268)

¹² Khushi Muhammad through L.Rs. and others v. Mst. Fazal Bibi and others (PLD 2016 Supreme Court 872)

limitation was to prevent stale demands and so it ought to be construed strictly;

(ii) The hurdles of limitation could not be crossed under the guise of any hardships or imagined inherent discretionary jurisdiction of the court. Ignorance, negligence, mistake or hardship did not save limitation, nor does poverty of the parties;

(iii) It was salutary to construe exceptions or exemptions to a provision in a statute of limitation rather liberally while a strict construction was enjoined as regards the main provision. For when such a provision was set up as a defence to an action, it had to be clearly seen if the case came strictly within the ambit of the provision;

(iv) There was 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 was no scope for any equity. The court could not claim any special inherent equity jurisdiction;

(v) Statute of limitation instead of being viewed in an unfavourable light, as an unjust and discreditable defence, should receive such support from courts of justice as would have made it what it was intended to be, a statute of repose. Plea of limitation could not be deemed as an unjust or discreditable defence. There was nothing morally wrong and there was no disparagement to the party pleading it. It was not a mere technical plea as it was based on sound public policy and no one should be deprived of the right he had gained by the law. It was indeed often a righteous defence. The court had to only see if the defence was good in law and not if it was moral or conscientious;

(vi) The intention of the law of limitation was not to give a right where there was not one, but to interpose a bar after a certain period to a suit to enforce an existing right.

(vii) The law of limitation was an artificial mode conceived to terminate justiciable disputes. It therefore had to be construed strictly with a leaning to benefit the suitor;

(viii) Reading of the Preamble and Section 5 of the Limitation Act, 1908 showed that the fundamental principle was to induce the claimants to be prompt in claiming rights. Unexplained delay or laches on the part of those who were expected to be aware and conscious of the legal position and who had facilities for proper legal assistance could hardly be encouraged or countenanced.

Pursuant to the above, law of limitation cannot be considered mere a technicality rather the same has been enacted and promulgated to

bring the litigation to an ultimate end within the prescribed time provided under law¹³. In Kiramat Khan's case¹⁴ this Court held:

'In order to avail the benefit of section 14 of the Limitation Act, 1908 it is imperative that a litigant seeking benefit of the said provision must show that he was prosecuting his remedy with due diligence and in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it. The material words are, "due diligence and good faith" in prosecuting a remedy before a wrong forum. The term "due diligence" entails that a person takes such care as a reasonable person would take in deciding on a forum to approach. The learned ASC has attempted to argue that the law was unclear and there was ambiguity regarding the forum which the employees of Frontier Corps could approach for redressal of their grievances and that such confusion was ultimately resolved by this Court through a judgment reported as IG, HQ Frontier Corps v. Ghulam Hussain (2004 SCMR 1397) in which it was held that employees of the Frontier Corps shall be governed under the provisions of Frontier Corps Ordinance, 1959 and for the limited purpose would enjoy the status of civil servants. As such, they could avail their remedies before the Tribunal for redressal of their grievances. The argument of the learned ASC for the petitioner is fallacious. This Court had as far back as 2004 clarified the law on the subject and: held that employees of Frontier Corps will be deemed to be civil servants for the purpose of approaching the Tribunal for redressal of their grievances. Reference in this regard may be made to IG, HO Frontier Corps v. Ghulam Hussain (2004 SCMR 1397). The subsequent judgment reported as Commandant, Frontier Constabulary v. Gul Raqib Khan (2018 SCMR 903) merely reaffirmed the earlier judgment. In view of the fact that there was no confusion or ambiguity in the law, the argument of learned ASC that the petitioner was bona fide availing a remedy with due diligence before a wrong forum and should therefore be granted the benefit of Section 14 of the Limitation Act holds no water.'

Apart from the above, in judgment of Imtiaz Ali¹⁵, delivered by a four-member Bench of this Court, delay of one day in filing of appeal was, without disclosing sufficient and plausible justification, not condoned and it was concluded:

'Winding up the above noted discussion, the appeal having been filed after one day of period of limitation, has created valuable right in favour of respondents. We having found no sufficient cause for filing of delayed appeal, are not prepared to condone it. Hence, the appeal is dismissed in limine.'

¹³ Chief Executive Officer NPGCL, Genco-III, TPS, Muzaffargarh v. Khalid Umar Tariq Imran and others (2024 SCMR 518) & Regional Police Officer, Dera Ghazi Khan Region and others v. Riaz Hussain Bukhari (2024 SCMR 1021)

¹⁴ Kiramat Khan v. IG, Frontier Corp and others (2023 SCMR 866)

¹⁵ Imtiaz Ali v. Atta Muhammad and another (PLD 2008 Supreme Court 462)

5. The crux of the discussion is that the appellate Court as well as the High Court have rightly adjudicated upon the matter in hand and have rightly non-suited the petitioner. No case for grant of leave is made out, consequent whereof leave is refused and the petition in hand stands dismissed.

Judge

Judge

Islamabad:
17.02.2025
'Approved for reporting'
(M.A.Hassan)