

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Sardar Tariq Masood  
Mr. Justice Amin-ud-Din Khan  
Mr. Justice Syed Hasan Azhar Rizvi

**Civil Petition No.1123 of 2020**  
*(Against the order dated 12.12.2019 of the  
High Court of Sindh, Karachi passed in J.C.M. No.15 of 2000)*

M/s Bentonite Pakistan Limited, resident of 78-A Garden Block, New Garden Town, Lahore through Murad A. Khan son of Khalid Shakeel, Director/Chief Executive.

Petitioner(s)

**VERSUS**

Bankers Equity Limited and others

...Respondent(s)

For the Petitioner(s): Mr. Nadeem-ud-Din Malik, ASC

For Respondent No.1: Dr. Chaudhry Waseem Iqbal,  
Official Assignee/Official Liquidator

Date of hearing: 15.02.2023.

...

**JUDGMENT**

**Syed Hasan Azhar Rizvi, J.-** Through this petition filed under sub-Section (14) of Section 6 of the Companies Act, 2017 (*the Act of 2017*), leave has been sought against the order dated 12.12.2019 passed by the High Court of Sindh, Karachi, whereby C.M.A. No.312 of 2019 in J.C.M. No.15 of 2000 being misconceived was dismissed.

2. Facts, in brief, leading to filing of instant petition are that respondent No.1 (*Bankers Equity Limited*) and syndicate

banks disbursed the financing facility to the petitioner (*M/s Bentonite Pakistan Limited*) for setting up Bentonite clay manufacturing unit at Shiekupura Road, Lahore. Due to default committed by the petitioner and its guarantors, respondent No.1 filed Suit No.44 of 2000 for recovery of Rs.183,757,756/- before the Lahore High Court, which was dismissed *vide* order dated 13.03.2002 on the ground that the statement of accounts attached with the plaint was not in accordance with the provisions of the Financial Institutions (Recovery of Finances) Ordinances, 2001. Being aggrieved of the above, Respondent No.1 filed R.F.A. No.579 of 2002 before the Lahore High Court, which too met with the fate of dismissal through order dated 24.02.2010. Respondent No.1 filed Civil Petition No.752-L of 2010 before this Court, which was converted into an appeal and allowed with the direction to file amended suit within 15 days *vide* order dated 12.03.2013. In compliance of said order of this Court, respondent No.1 filed amended plaint and fresh statement of accounts before the Lahore High Court in its recovery Suit No. 44 of 2000. Lahore High Court passed interim decree for Rs.54,051,980/- on 12.12.2014 and final decree for Rs.56,624,205/- on 10.06.2015 together with cost of fund till realization in favour of respondent No.1.

The petitioner had also filed suit bearing No. 95 of 2000 against respondent No.1 for damages on 29.09.2000

amounting to Rs.655.959 million before the Lahore High Court, which was decided through order dated 11.07.2002, relevant part wherefrom reads as under:-

*“ . . . . . This suit cannot proceed without leave of the learned Company Judge passing the winding up order. Furthermore, it will not be proper to keep the case pending to await grant of leave by the learned Company Judge. The suit alongwith all pending applications thereto are thus consigned to record. The plaintiff or any of the parties may seek revival of the suit on obtaining leave under Section 316 of the Companies Ordinance. . . . . ”*

On 06.12.2019, the petitioner, after passing of about 17 years, filed C.M.A. No.312 of 2019 under Section 316 of the erstwhile Companies Ordinance (*now Section 310 of the Companies Act, 2017*) wherein it was stated that the Chief Executive of the company, who was pursuing the matter before the Lahore High Court, was expired on 15.10.2017, however, no effort was made by the petitioner/company to seek leave of the Court to proceed with Suit bearing No.95 of 2000 before the Lahore High Court. The said application was dismissed by the High Court of Sindh, at Karachi *vide* impugned order dated 12.12.2019.

3. Learned counsel for the petitioner contends that the order passed by the High Court is illegal, without jurisdiction and not sustainable in the eyes of law as the case of the petitioner falls under subsection (3) of Section 310 of the Act of 2017 rather than subsection (1) of Section 310 of

the Act *ibid*; that the petitioner sought leave of the Court to file a fresh suit rather than leave for continuation of the suit, which is pending adjudication before the Lahore High Court; that the High Court of Sindh has ignored the material fact while passing the impugned order that the claim lodged before the Lahore High Court pertains to damages for breach of contract against respondent No.1 which cannot be investigated and disposed of summarily by the liquidator and that the High Court of Sindh has failed to take into consideration the fact that the petitioner filed the suit for damages on 29.09.2000 much prior to the order dated 18.04.2001 for widening up of the company/petitioner.

On the other hand, Official Assignee/Liquidator, present in Court, appearing on behalf of respondent No.1, submits that the impugned order is strictly in accordance with law. The petitioner approached to the High Court for obtaining permission to pursue the suit after about a lapse of 17 years without any plausible explanation/ground. Reliance is placed to the case reported as **Khushi Muhammad through L.Rs. and others** versus **Mst. Fazal Bibi and others** (PLD 2016 SC 872); relevant condition wherefrom is reproduced as under:

*“(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.”*

Learned Official Assignee/Liquidator submits that 90% claims against the creditors of respondent No.1 have been settled/paid and the instant application filed by the petitioner was just to cause delay/ hindrance in payment of the claim of the creditors of respondent No.1.

4. It is to be noted that Subsection (2) of section 1 of the Limitation Act, 1908 (*the Act of 1908*) provides that it extends to the whole of Pakistan. Thus, by virtue of said provision, all the proceedings under the Act of 2017 are subject to the Act of 1908, except where any proceeding is expressly brought out of the purview of the said Act. The only provision in this regard in the Act of 2017 is Section 410, which speaks only about limitation regarding filing of suit by a liquidator for the recovery of any debt due to the company. Thus, the exclusion is only to the extent of the said suit; however, for all other applications and proceedings, the Act of 1809 would be applicable. It is to be noted that there is no specific provision in the Act of 1908 which deals with the applications or proceedings filed under the Act of 2017, except Article 112 thereof, which deals with *“a call by a company registered under any Statute or Act”*; therefore, the general provision dealing with the applications would be applicable to the applications filed under the Act of 2017. The general

provision, which deals with the applications, where no period of limitation is provided in the Act of 1908, etc., is Article 181 thereof which reads as under: -

<b>181.</b> <i>Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908.</i>	<i>Three years</i>	<i>When the right to apply accrues.</i>
---	--------------------	---

It is apparent from the above provision that all the applications, for which no period of limitation is provided elsewhere in this Schedule to the Act of 1908 or by Section 48 of the Code of Civil Procedure, 1908, would be governed by Article 181 *ibid*. Thus, any application filed under the Act of 2017 would be governed by Article 181 *ibid* and there would be a period of limitation of three years for such applications.

5. In view of the above provisions of law, we observe that it was in the knowledge of the petitioner since 2002, however, instead of approaching the Company Judge for seeking permission, the petitioner chose to abandon it for about 17 years and for this, no plausible explanation was given, which shows that the conduct of the petitioner is to frustrate the liquidation proceedings pending against respondent No.1 before the Company Judge in the High Court of Sindh. Besides, in view of Article 181 *ibid*, they could have filed such application within three years and not beyond that. The findings of fact rendered by the Company Judge of High Court of Sindh are based on sound and cogent reasoning and

we are in agreement with the same. Learned counsel for the petitioner has not been able to make out a case justifying interference by this Court.

6. For what has been discussed above, this petition lacking in merit is dismissed and leave refused.

JUDGE

JUDGE

JUDGE

Islamabad, the  
15<sup>th</sup> February, 2023  
Approved for reporting  
*Ghulam Raza/\**